Also, petition of citizens of Sheldon, N. Dak., and Morris, N. J., against bill S. 5221, to regulate the practice of osteopathy in the District of Columbia—to the Committee on the District of Columbia.

By Mr. BURGESS: Petition of the New Immigrants' Protective League, against the Lodge-Gardner bill—to the Committee on Immigration and Naturalization.

By Mr. BURLEIGH: Petition of Elizabeth M. Pond, librarian of the free library of Belfast, Me., against abridgment of the right of libraries to import books in the English language—to the Committee on Ways and Means.

By Mr. BURTON of Delaware: Paper to accompany bill for relief of members of the Fifth and Sixth Regiments of Delaware Volunteers—to the Committee on Invalid Pensions.

Also, petition of the assembly of the State of Delaware, for legislation placing Lieut. Col. Harry G. Cavenaugh on the retired list—to the Committee on Military Affairs.

By Mr. CAMPBELL of Ohio: Petition of J. L. Bishop, commander of post, for the general service-pension bill—to the Committee on Invalid Pensions.

By Mr. DALZELL: Petition of Encampment No. 1, Union Veterans' Legion, of Pittsburg, Pa., for the McCumber pension bill—to the Committee on Invalid Pensions.

By Mr. DAVIS of Minnesota: Petition of N. B. Barron Post, Grand Army of the Republic, of Waterville, Minn., for the age pension bill—to the Committee on Invalid Pensions.

By Mr. DOVENER: Papers to accompany bills for relief of Jesse Craft and John R. Bungard—to the Committee on Invalid Pensions.

By Mr. FLETCHER: Petition of the Minnesota legislature, for removal of the duty on lumber—to the Committee on Ways and Means.

Also, petition of Rev. S. Phoenix, of Minneapolis, for passage of the Littlefield bill (H. R. 13655)—to the Committee on the Judiciary.

By Mr. FOSTER of Indiana: Petition of Fidelity Lodge, No. 109, Brotherhood of Railway Trainmen, of Logansport, Ind., for bill H. R. 9328—to the Committee on the Judiciary.

Also, petition of Fidelity Lodge, No. 109, Brotherhood of Railway Trainmen, of Logansport, Ind., for bill S. 5133—to the Committee on Interstate and Foreign Commerce.

By Mr. GRAHAM: Petition of citizens of Allegheny County, Pa., for increase of salaries of post-office clerks—to the Committee on the Post-Office and Post-Roads.

Also, petition of George C. Buel, for an appropriation of $100,000 to demonstrate and test the utility of the Holman signal system for railways—to the Committee on Interstate and Foreign Commerce.

By Mr. HILL of Connecticut: Petition of the general assembly of the State of Connecticut, for establishment of forest reserves in the White Mountains—to the Committee on Agriculture.

By Mr. HINSHAW: Petition of B. J. Rainey, street car conductor, Division No. 343, Order Railway Conductors, for the sixteen-hour bill—to the Committee on Interstate and Foreign Commerce.

By Mr. HOUSTON: Paper to accompany bill for relief of Paul Kerr—to the Committee on Pensions.

By Mr. HOWELL of New Jersey: Paper to accompany bill for relief of Charles Van Allstrom—to the Committee on Invalid Pensions.

By Mr. HUBBARD: Petition of the thirty-first general assembly of Iowa, for an amendment to the Constitution abolishing polygamy—to the Committee on the Judiciary.

By Mr. HUNT: Petition of Typographical Union No. 8, of St. Louis, Mo., for desired reforms in the postal laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of Metal Polishers, Buffers, and Platers' Local Union No. 13, against employment of Asiatics in the Canal Zone—to the Committee on Foreign Affairs.

By Mr. KAHN: Petition of the California State Federation of Labor, for the establishment of a ferry between Mare Island Navy-Yard and Vallejo—to the Committee on Interstate and Foreign Commerce.

By Mr. LILLEY: Paper to accompany bill for relief of Benjamin Kelsey (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. LINDSAY: Petition of District Grand Lodge No 1, Independent Order B'nai Brith, against the Gardner-Dillingham bill—to the Committee on Immigration and Naturalization.

Also, petition of the National German-American Alliance, against bill H. R. 13655 (the Littlefield bill for the regulation of commerce)—to the Committee on Interstate and Foreign Commerce.

Also, petition of the American Protective Tariff League, for a dual tariff—to the Committee on Ways and Means.

By Mr. LEE: Paper to accompany bill for relief of Sarah C. Gilliam—to the Committee on War Claims.

By Mr. MOORE of Texas: Petition of Miller T. Orem, of Houston, Tex., against tariff on linotype machines—to the Committee on Ways and Means.

By Mr. NEEDHAM: Petition of McPherson Post, Grand Army of the Republic, Department of California and Nevada, of Hanford, Cal., favoring the McCumber bill—to the Committee on Invalid Pensions.

Also, petition of the Board of Trade of San Francisco, for an appropriation to construct a breakwater at the port of Hilo, Hawaii—to the Committee on Rivers and Harbors.

Also, petition of the Board of Trade of San Francisco, against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Board of Trade of San Francisco, for enactment of bill H. R. 21671—to the Committee on Naval Affairs.

By Mr. RAINEY: Petition of Bluff Springs and Monroe Methodist Episcopal churches, in favor of the Littlefield bill—to the Committee on the Judiciary.

By Mr. REYBURN: Petition of Jane Bingham Abbott et al., for bills S. 6330 and H. R. 19853—to the Committee on Patents.

By Mr. SAMUEL: Petition of Jane Bingham Abbott et al., favoring bills S. 6330 and H. R. 19853 (the copyright bill)—to the Committee on Patents.

By Mr. SHARTEL: Petition of E. H. Cooper et al., of Carl Junction, Mo., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. SLAYDEN: Papers to accompany bills for relief of Mary A. Haney and Clarence E. Haney—to the Committee on War Claims.

By Mr. SPERRY: Petition of the general assembly of the State of Connecticut, for establishment of forest reserves in the White Mountains—to the Committee on Agriculture.

By Mr. STEENERSON: Petition of A. L. Hagen et al., for amendment of the free-alcohol law to allow making alcohol in a small way in plants of low cost—to the Committee on Ways and Means.

Also, resolution of the legislature of the State of Minnesota, for repeal of the tariff on lumber—to the Committee on Ways and Means.

By Mr. TOWNSEND: Petition of the Grand Rapids Branch of the Railway Mail Association, for increase of salary of postal clerks—to the Committee on the Post-Office and Post-Roads.

By Mr. VAN WINKLE: Paper to accompany bill for relief of Susie F. Harrison—to the Committee on Invalid Pensions.

By Mr. VOLSTEAD: Petition of J. R. Landy, for an amendment to the free-alcohol law to permit distillation in a small way in plants of low cost—to the Committee on Ways and Means.

Also, petition of the legislature of the State of Minnesota, for repeal of the duty on lumber—to the Committee on Ways and Means.

## SENATE.

MONDAY, *February 4, 1907.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. SPOONER, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

### AGRICULTURAL LANDS IN FOREST RESERVES.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting the draft of a proposed bill to amend an act entitled "An act to provide for the entry of agricultural lands in forest reserves," approved June 11, 1906; which, with the accompanying papers, was referred to the Committee on Public Lands, and ordered to be printed.

### CHARLES S. HANKS—RAILROAD STATISTICS.

The VICE-PRESIDENT laid before the Senate a communication from the Interstate Commerce Commission, transmitting, in response to a resolution of the 28th ultimo, certain information relative to the employment by the Commission of Charles S. Hanks, and also a statement of facts found which show or tend to show that the freight and passenger rates can be reduced as stated by Hanks; which, with the accompanying papers, was referred to the Committee on Interstate Commerce, and ordered to be printed.

FINDINGS BY THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the Presbyterian Church of Batesville, Panola County, Miss., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

BALTIMORE AND WASHINGTON TRANSIT COMPANY.

The VICE-PRESIDENT laid before the Senate the annual report for the Baltimore and Washington Transit Company, of Maryland, for the fiscal year ended December 3, 1906; which was referred to the Committee on the District of Columbia, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the House had passed the bill (S. 976) granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and in the war with Mexico.

The message also returned to the Senate, in compliance with its request, the bill (S. 7795) for the extension of Albemarle street NW., District of Columbia.

The message further returned to the Senate, in compliance with its request, the bill (S. 7917) to authorize the Interstate Bridge and Terminal Railway Company, of Kansas City, Kans., to construct a bridge across the Missouri River.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the National Reform Association, of Ray, Ind., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a memorial of the Boone and Crockett Club, of New York City, N. Y., remonstrating against the enactment of legislation providing for the abolishment of the Bureau of Biological Survey in the Department of Agriculture; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Hawaiian Evangelical Association, of Honolulu, Hawaii, praying that an appropriation be made to defray the expenses of a convention to be held in Honolulu of representatives from every consulate situated at ports tributary to the Pacific Ocean; which was referred to the Committee on Commerce.

He also presented petitions of the Woman's Christian Temperance Unions of Fremont, Bloomington, Amboy, Elkhart, Huntington, Morgantown, Fountain City, Allen County, Sycamore, Madison, Albany, Stinesville, Greentown, Auburn, Wabash, Ossian, Roll, Ray, Swayzee, Newcastle, Rising Sun, Summitville, Greensburg, Butlerville, Jeffersonville, Aurora, Lafayette, Moores Hill, Lowell, Lawrenceburg, St. Joe, Crown Point, Fairmount, Galena, Muncie, Bluffton, Mulberry, Sandusky, Mount Vernon, Kokomo, Columbus, Boswell, Stones Crossing, Danville, Bridgeport, and Greensboro, all in the State of Indiana, praying for an investigation into the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were ordered to lie on the table.

Mr. CULLOM presented a petition of the Woman's Christian Temperance Union of Saybrook, Ill., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. DILLINGHAM presented petitions of sundry citizens of Burlington, Pittsford, Manchester, and Bradford, all in the State of Vermont, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. CULBERSON presented a petition of sundry citizens of Ennis, Tex., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. FULTON. I present a memorial of the legislature of Oregon, in favor of the removal of the duty on raw jute, jute fabric, and jute bags, imported into the United States. I ask that the memorial be read, and referred to the Committee on Finance.

There being no objection, the memorial was read, and referred to the Committee on Finance, as follows:

UNITED STATES OF AMERICA,
STATE OF OREGON,
OFFICE OF THE SECRETARY OF STATE.

I, F. W. Benson, secretary of state of the State of Oregon, and custodian of the seal of said State, do hereby certify:

That the annexed is a full, true, and complete copy of senate joint memorial No. 2, adopted by the senate of the State of Oregon, January 22, 1907, and by the house of representatives of the State of Oregon, January 28, 1907, addressed to the honorable Senate and House of Representatives of the United States of America, in re the removal of all tariff now in existence on raw jute, jute fabric, and jute bags, imported into the United States, and admitting free of duty all such material, original of which was duly filed in the office of the secretary of State January 29, 1907.

In testimony whereof I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the capitol at Salem, Oreg., this 29th day of January, A. D. 1907.

[SEAL.] F. W. BENSON,
*Secretary of State.*

Senate joint memorial No. 2.

*Senate and House of Representatives of the United States of America:*

Your memorialists, the senate and house of representatives of the State of Oregon, respectfully represent:

That in order to handle the wheat crop, the wool clip, and the hop products of the Pacific Northwest it is necessary to use large quantities of burlap made from jute fiber, and that at the present time it requires not less than 20,000,000 jute bags to handle the wheat crop of the Pacific Northwest, and that large quantities of jute cloth are used for sacking of wool and baling hops as well; and

Whereas within one year the price of jute and jute fabric has increased at least 50 per cent, probably owing to a jute trust or the increasing demand for jute; and

Whereas owing to this increase in the price of jute, jute cloth, and jute fabric, it has worked very much of a detriment to the farmers, wool growers, and the agriculturalists in general: Therefore your memorialists respectfully request your honorable bodies to remove all tariffs now in existence on raw jute, jute fabric, and jute bags imported into the United States and admit free of duty all such material. Be it

*Resolved*, That the secretary of state is hereby instructed to transmit a copy of this resolution to the Hon. C. W. FULTON, United States Senator from Oregon, and to the Hon. BINGER HERMANN, Representative from Oregon, and respectfully request them, as members of Congress, to use all honorable means to have such duty removed.

Adopted by the house January 28, 1907.

FRANK DAVEY, *Speaker.*

Adopted by the senate January 22, 1907.

E. W. HAINES, *President.*

Mr. DU PONT presented a petition of 258 citizens of Wilmington, Del., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. NELSON. I present a concurrent resolution of the legislature of Minnesota, in favor of the abolishment of the tariff on lumber. I ask that the concurrent resolution be read and referred to the Committee on Finance.

There being no objection, the concurrent resolution was read, and referred to the Committee on Finance, as follows:

Whereas among the many trusts and monopolies which menace the welfare of our country, and especially the great Northwest, the lumber trust is the most exacting, grinding, and oppressive, levying tribute upon all classes of people, retarding and hindering the upbuilding of homes, alike in city, town, and country: Therefore, be it

*Resolved by the senate of the State of Minnesota (the house of representatives concurring)*, That we respectfully petition the Congress of the United States to forthwith abolish the tariff on lumber.

*Resolved further*, That the secretary of the senate be instructed to transmit copies of this resolution to our Senators and Representatives in Congress.

Mr. NELSON presented sundry petitions of citizens of the State of Minnesota, praying for the adoption of certain amendments to the present denatured alcohol law; which were referred to the Committee on Finance.

He also presented petitions of sundry citizens of Granger, Cottonwood, Madison Lake, Montevideo, Clinton, and of the congregation of the Methodist Episcopal Church of Lawrence, all in the State of Minnesota, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented the petition of George I. Becker, of the State of Minnesota, praying for the enactment of legislation for the relief of Joseph V. Cunningham and other officers of the Philippine Volunteers; which was referred to the Committee on Claims.

Mr. KEAN presented a memorial of the Morris County Society for the Prevention of Cruelty to Animals, of Morristown, N. J., remonstrating against the enactment of legislation for the abolishment of the Division of Biological Survey in the Department of Agriculture; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Woman's Christian Temperance Union of Haddon Heights, N. J., and a petition of the Woman's Christian Temperance Union of Blackwood, N. J., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. BLACKBURN presented a paper to accompany a bill (S. 5279) for the relief of Cash Claxon; which was referred to the Committee on Claims.

Mr. PILES presented a memorial of sundry citizens of Colville, Wash., and a memorial of sundry citizens of Clarkston, Wash., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia

to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented sundry petitions of citizens of Snohomish, Wash., and a petition of sundry citizens of Seattle, Wash., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. McCREARY presented a petition of sundry citizens of Berea, Ky., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. HANSBROUGH presented a petition of sundry citizens of Park River, N. Dak., praying for the adoption of a certain amendment to the free-alcohol law; which was referred to the Committee on Finance.

Mr. LODGE presented a petition of sundry citizens of Wellesley, Mass., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

He also presented the petition of Andrew V. V. Raymond, of Schenectady, N. Y., praying for the establishment of an international commission for the investigation of the conditions in the Kongo Free State; which was referred to the Committee on Foreign Relations.

REPORTS OF COMMITTEES.

Mr. BURKETT, from the Committee on Pensions, to whom was referred the bill (S. 5992) granting an increase of pension to Franklin Craig, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 3435) granting an increase of pension to Rowland Saunders;

A bill (S. 5423) granting an increase of pension to William M. Tinsley; and

A bill (S. 6955) granting an increase of pension to Abram W. Vandel.

Mr. BURKETT, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 7373) granting an increase of pension to Jeremiah Thomas; and

A bill (S. 4562) granting an increase of pension to Henry Stegman.

Mr. SIMMONS, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 7851) for the relief of J. M. Bloom, reported it with amendments, and submitted a report thereon.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 7606) granting an increase of pension to Samuel Reeves;

A bill (S. 7532) granting an increase of pension to Joseph Klichli;

A bill (S. 8107) granting an increase of pension to Leonidas Obenshain;

A bill (S. 6609) granting an increase of pension to John Shank;

A bill (S. 7483) granting an increase of pension to Marinda D. Beery;

A bill (S. 7480) granting an increase of pension to John Bowen;

A bill (S. 7485) granting an increase of pension to Lester M. P. Griswold; and

A bill (S. 4461) granting an increase of pension to Thomas S. Elsberry.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 7420) granting a pension to Eleanor N. Sherman;

A bill (S. 5361) granting an increase of pension to J. H. Peters;

A bill (S. 7244) granting an increase of pension to Bessie Sharp Pettit;

A bill (S. 7341) granting a pension to Menzo S. Bishop;

A bill (S. 7481) granting an increase of pension to A. W. Edwards;

A bill (S. 7305) granting an increase of pension to R. K. Leech; and

A bill (S. 7842) granting an increase of pension to E. C. Stevens.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 8024) granting a pension to Susan J. Rogers;

A bill (S. 7764) granting an increase of pension to Davis Gilborne;

A bill (S. 7763) granting an increase of pension to Jacob S. Hawkins;

A bill (S. 6610) granting an increase of pension to Isaac Johnson; and

A bill (S. 8207) granting an increase of pension to Peter Wedeman.

Mr. BURNHAM, from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 8120) granting an increase of pension to Benjamin T. Woods;

A bill (S. 7708) granting an increase of pension to Susan A. Brockway;

A bill (S. 2315) granting an increase of pension to William T. Graffam;

A bill (S. 6380) granting a pension to Josiah B. Kinsman; and

A bill (S. 7334) granting an increase of pension to Joshua F. Jellison.

Mr. BURNHAM, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 7831) granting an increase of pension to William H. Grandaw;

A bill (S. 913) granting an increase of pension to Charles E. Foster;

A bill (S. 6911) granting an increase of pension to George A. Boyle; and

A bill (S. 7039) granting an increase of pension to Robert Hamilton.

Mr. BURNHAM, from the Committee on Pensions, to whom was referred the bill (S. 570) granting an increase of pension to John W. Crane, reported it with an amendment, and submitted a report thereon.

Mr. SMOOT, from the Committee on Pensions, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 7912) granting an increase of pension to Eleanor P. Bigler;

A bill (S. 3852) granting an increase of pension to Levi W. Curtis; and

A bill (S. 8215) granting an increase of pension to James W. Lendsay.

Mr. SMOOT, from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 7915) granting an increase of pension to Mary M. Howell;

A bill (S. 8237) granting an increase of pension to Lydia Irvine; and

A bill (S. 7696) granting an increase of pension to Zadok K. Judd.

Mr. SMOOT, from the Committee on Pensions, to whom was referred the bill (S. 7572) granting an increase of pension to Warren M. Fales, reported it without amendment, and submitted a report thereon.

Mr. PILES, from the Committee on Pensions, to whom was referred the bill (S. 6702) granting an increase of pension to Charles E. Dubois, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 8005) granting an increase of pension to Garrett F. Cowan;

A bill (S. 8021) granting an increase of pension to John F. Martine;

A bill (S. 7004) granting an increase of pension to Edward G. Burnet;

A bill (S. 7470) granting an increase of pension to William F. Burnett; and

A bill (S. 7154) granting an increase of pension to Samuel A. Miller.

Mr. PILES, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 3997) granting an increase of pension to Jacob Berry;

A bill (S. 7473) granting an increase of pension to John M. Gilliland; and

A bill (S. 6531) granting an increase of pension to Francis A. Dory.

Mr. PATTERSON, from the Committee on Pensions, to whom was referred the bill (S. 8017) granting an increase of pension to Watson L. Corner, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 1520) granting an increase of pension to Laura N. Freeman;

A bill (S. 1515) granting an increase of pension to Elizabeth Strong;

A bill (S. 3672) granting an increase of pension to Daniel R. Emery;

A bill (S. 1136) granting an increase of pension to Warren W. Whipple;

A bill (S. 8105) granting an increase of pension to Anna Arnold; and

A bill (S. 4762) granting a pension to Mary A. Brady.

Mr. WARREN, from the Committee on Military Affairs, to whom was referred the bill (S. 4767) authorizing the President to appoint E. Russell Mears captain and paymaster, United States Army, reported it with amendments, and submitted a report thereon.

Mr. TALIAFERRO, from the Committee on Pensions, to whom was referred the bill (S. 5813) granting an increase of pension to Marshall T. Kennan, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 7772) granting a pension to Ellen Dougherty, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 7722) granting an increase of pension to Henderson Stanley;

A bill (S. 7803) granting an increase of pension to William H. Long; and

A bill (S. 7825) granting an increase of pension to Garrett Rockwell.

Mr. OVERMAN, from the Committee on Pensions, to whom was referred the bill (S. 6910) granting an increase of pension to George F. Chamberlin, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 8225) granting an increase of pension to Elizabeth P. Hargrave, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 7877) granting an increase of pension to Thomas D. Marsh;

A bill (S. 7938) granting an increase of pension to John W. Messick;

A bill (S. 8034) granting an increase of pension to Jacob M. F. Roberts; and

A bill (S. 7830) granting an increase of pension to Wilbur A. Stiles.

COURTS IN TENNESSEE.

Mr. CULBERSON. I am directed by the Committee on the Judiciary, to whom was referred the bill (H. R. 25034) to change the time of holding circuit and district courts of the United States for the middle district of Tennessee, to report it favorably without amendment.

Mr. FRAZIER. I ask unanimous consent for the present consideration of the bill.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

HENRY SCHLOSSER.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (S. 7356) granting an increase of pension to Henry Schlosser, just reported by the Senator from North Dakota [Mr. McCUMBER] from the Committee on Pensions.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to place on the pension roll the name of Henry Schlosser, late of Company E, Fiftieth Regiment Wisconsin Volunteer Infantry, and to pay him a pension at the rate of $30 per month in lieu of that he is now receiving.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

COURT AT QUINCY, ILL.

Mr. CLARK of Wyoming. I report back favorably, from the Committee on the Judiciary, without amendment, the bill (H. R. 19752) for an additional term of court at Quincy, Ill. I call the attention of the senior Senator from Illinois to the bill.

Mr. CULLOM. The bill comprises only one section, and I ask that it be put on its passage.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

ESTATE OF GEORGE W. SOULE.

Mr. BURNHAM. I ask that an order be made for a reprint of the majority report and the views of the minority of the Committee on Claims on the bill (S. 188) for the relief of the legal representatives of George W. Soule.

There being no objection, the order was agreed to, as follows:

*Ordered*, That Senate Report No. 4312, Fifty-ninth Congress, first session, to accompany the bill (S. 188) for the relief of the legal representatives of George W. Soule, be reprinted with supplementary report, "Views of the minority."

BILLS INTRODUCED.

Mr. BLACKBURN introduced a bill (S. 8291) for the relief of Bartholomew Diggins; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. FOSTER introduced a bill (S. 8292) providing for the completion by the Secretary of War of a monument to the memory of the American soldiers who fell in the battle of New Orleans at Chalmette, La., and making the necessary appropriation therefor; which was read twice by its title, and referred to the Committee on the Library.

Mr. PILES introduced a bill (S. 8293) granting an increase of pension to Jonathan Willard; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. KEAN introduced a bill (S. 8294) granting a pension to Sarah M. B. Miller; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 8295) granting an increase of pension to Dorothy Margaret Van Hart; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. CLAY introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 8296) for the relief of Wellborn Echols; and

A bill (S. 8297) for the relief of the estate of John Tittle, deceased (with accompanying papers).

Mr. CULLOM introduced a bill (S. 8298) to amend an act entitled "An act to regulate commerce," approved June 29, 1906; which was read twice by its title, and referred to the Committee on Interstate Commerce.

Mr. NELSON introduced a bill (S. 8299) to confer certain civic rights on the Metlakahtla Indians of Alaska; which was read twice by its title, and referred to the Committee on Commerce.

Mr. FULTON introduced a bill (S. 8300) to remove the charge of desertion from the military record of William Armstrong; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. WARREN introduced a bill (S. 8301) for the reimbursement of certain sums of money to certain enlisted men of the Philippine Scouts; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Military Affairs.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. FOSTER submitted an amendment providing for the creation of an additional division of the railway mail service with headquarters at New Orleans, La., etc., intended to be proposed by him to the post-office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. PILES submitted an amendment proposing to appropriate $150,000 for the erection of hospital buildings for the naval hospital at Puget Sound Navy-Yard, Wash., intended to be proposed by him to the naval appropriation bill; which was re-

ferred to the Committee on Naval Affairs, and ordered to be printed.

He also submitted an amendment proposing to increase the salaries of certain officials and provide additional clerks, etc., Office of Public Roads, Department of Agriculture, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

Mr. BURROWS submitted an amendment proposing to appropriate $11,000 for resurfacing the roadbed of Wisconsin avenue between M street and P street, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. SCOTT submitted an amendment proposing to appropriate $15,000 for the opening and improvement of M street from Bladensburg road easterly to Twenty-eighth street NE., intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. M. C. LATTA, one of his secretaries, announced that the President had approved and signed the following acts and joint resolution:

On January 31:

S. 7034. An act to incorporate the International Sunday School Association of America; and

S. 8014. An act to authorize The National Safe Deposit, Savings and Trust Company of the District of Columbia, to change its name to that of National Savings and Trust Company.

On February 1:

S. 1178. An act providing for the resurvey of a township of land in Colorado;

S. 7827. An act permitting the building of a railway bridge across the Mississippi River in Morrison County, State of Minnesota;

S. 549. An act granting a pension to Louis T. Frech;

S. 2565. An act granting a pension to William P. Parrill;

S. 4404. An act granting an increase of pension to Elizabeth B. Boyle;

S. 5672. An act granting an increase of pension to Felix G. Murphy;

S. 6226. An act granting an increase of pension to Mary A. Mickler;

S. 6510. An act granting an increase of pension to Sarah R. Williams;

S. 7096. An act granting an increase of pension to Margaret McCullough;

S. 7177. An act granting an increase of pension to Melvin L. Le Suer, alias James French;

S. 3702. An act for the relief of the Gurley Memorial Presbyterian Church, of the District of Columbia, and for other purposes;

S. 4267. An act to prohibit the sale of intoxicating liquors near the Government Hospital for the Insane and the Home for the Aged and Infirm;

S. 5698. An act to regulate the practice of veterinary medicine in the District of Columbia;

S. 6470. An act in relation to the Washington Market Company;

S. 7028. An act for the relief of the Allis-Chalmers Company, of Milwaukee, Wis.;

S. 7147. An act to amend section 2536 of the Revised Statutes, relative to assistant appraisers at the port of New York, and further defining their powers, duties, and compensation; and

S. 7170. An act to amend an act relating to service on foreign corporations, approved June 30, 1902, entitled "An act to amend an act entitled 'An act to establish a code of law for the District of Columbia.'"

On February 2:

S. R. 86. Joint resolution granting an extension of time to certain homestead entrymen;

S. 4819. An act for the relief of M. A. Johnson; and

S. 6338. An act to amend section 2 of an act entitled "An act to incorporate the Convention of the Protestant Episcopal Church of the diocese of Washington."

APPEALS IN CRIMINAL PROSECUTIONS.

Mr. NELSON. I ask unanimous consent for the consideration of the bill (H. R. 15434) to regulate appeals in criminal prosecutions.

The VICE-PRESIDENT. The bill will be read for the information of the Senate.

The Secretary read the bill, which had been reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and insert:

That a writ of error may be taken by and on behalf of the United States from the district or circuit courts to the Supreme Court or the circuit courts of appeals, as prescribed in an act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and the acts amendatory thereof, in all criminal cases, in the following instances, to wit:

From the decision or judgment quashing or setting aside an indictment;

From the decision or judgment sustaining a demurrer to an indictment or any count thereof;

From the decision arresting a judgment of conviction for insufficiency of the indictment;

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

That hereafter all objections to the sufficiency of the indictment in matters of form only shall be made and determined prior to the impaneling of the jury.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

Mr. HALE. I object.

The VICE-PRESIDENT. Objection is made.

Mr. NELSON. I move that the Senate proceed to the consideration of the bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. CLAY. Mr. President, this is an important measure. I did not catch its full import in the reading. I dislike to take the time of the Senate, but I ask that it be again read.

The VICE-PRESIDENT. The amendment reported as a substitute from the Committee on the Judiciary will be again read.

The Secretary again read the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment reported by the Committee on the Judiciary in the nature of a substitute.

The amendment was agreed to.

The bill was reported to the Senate as amended and the amendment was concurred in.

Mr. HALE. I do not expect, Mr. President, to be able to arrest the progress of this bill, but I desire an opportunity to vote against it, and to protest against it.

I do not think there is any necessity for changing the great fundamental principle of law of protecting the citizen that has always obtained for English-speaking people and to add now anything more to the rights and privileges of the General Government. The old criminal law, with its method of administration and the proposition that no man shall be put in peril twice, is good enough criminal law for me. The tendency of the present day is to take away from the citizen and to give to the Government. I deprecate that tendency. I am in a minority, and can only protest. I shall ask, when the final vote is taken, that we may have the yeas and nays upon the passage of the bill.

Mr. WHYTE. Mr. President, I concur entirely with the Senator from Maine. I do not think this bill ought to pass, and least of all that it should be taken up by unanimous consent and hurried through. It is a bill taking from a party charged with crime privileges which he now enjoys and which have never been taken from him before in the history of the criminal practice of the United States courts.

I shall certainly vote against the bill if it is put to a vote of the Senate.

Mr. NELSON. Mr. President, I do not intend to enter into any debate, but I desire to correct the Senator from Maine and the Senator from Maryland in the misapprehension under which both seem to labor.

The bill does not in any shape take away any of the rights the defendant now has in the matter of appeal or review of criminal cases. It simply allows the Government, in certain cases, to take an appeal where the Government has never had that right before.

It has lately become the fashion in several of the United States inferior courts for judges to pronounce an act of Congress unconstitutional and void. Where an indictment has been framed, after the court has made that decision and decided the act unconstitutional and void, there is no way by which the case can be appealed to the Supreme Court for a decision upon it.

In addition, I wish to say that this is no innovation. If the Senator from Maryland will consult the statutes of his own State he will find that in certain cases there the State is allowed an appeal in criminal cases even broader than this bill proposes to give.

Mr. HALE. Will the Senator allow me to ask him a question?

Mr. NELSON. In a moment. If Senators will examine the reports of the committee they will find that in a large majority of the States provision has been made in one form or another for an appeal in criminal cases.

The substance of this bill has been recommended by the Department of Justice for several years. It was specially recommended by the President in his recent annual message. The bill as it came from the House has been entirely revised and amended by the committee. In a late number of the Harvard Law Review, one of the best legal periodicals I know of in the country, the House bill and the Senate committee substitute are discussed, and they entirely agree that this is a just and proper measure; that it is entirely within constitutional limits, and that it in no wise detracts from the rights the defendant has heretofore had. It simply authorizes in a certain few instances the Government to take an appeal for the purpose of getting an adjudication upon important constitutional questions.

Mr. HALE. The Government has not that appeal now?

Mr. NELSON. No; it has not. The Government has no right of appeal in criminal cases.

Mr. HALE. That is it precisely. This is a very great innovation.

Mr. NELSON. I wish to say further that where a jury has been impaneled and where the defendant has been tried an appeal does not lie. It is only in proceedings ancillary to the impaneling of a jury.

Mr. HALE. I understand that; and if the Senator will allow me——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Maine?

Mr. NELSON. Certainly.

Mr. HALE. I understand that clearly. I read the bill very carefully. It came up once before and I objected to it. It does not take away every right that the accused has, but it takes away certain rights that he has now, and allows an appeal by the Government as in civil cases, which it does not have now. But whether that is right or wrong, that there will be no appeal by the Government has been one of the principles of law which has been practiced and observed for years. That is how it is an innovation.

Mr. BACON. Mr. President, I do not desire to discuss the measure at length. There are other Senators here who are on the Judiciary Committee and who will probably present the legal view of it, one of them, the Senator from Pennsylvania [Mr. KNOX], especially, having had experience in the class of cases out of which the demand for this law grew.

I simply desire to call the attention of the Senate to the fact, which has been previously stated by the Senator from Minnesota [Mr. NELSON], that this measure in no manner prejudices the rights of the defendant. It in no manner puts him twice in jeopardy.

The principle of the rule that a man shall not be put twice in jeopardy is based upon a very sound reasoning. In a criminal case on one side there is the powerful Government, whether that be the Federal Government or a State government, and on the other side there is the individual accused. If it were within the power of the Government to put a man in jeopardy more than once, it will be seen that the power for tyranny and oppression would be unlimited. When a man had once been tried and acquitted it would be known where the weak spot in the case of the prosecution was, and he could again be put upon trial and, either fraudulently or otherwise, the testimony necessary to buttress the case in that particular could be supplied and the man again put upon trial, and if that effort failed the same process could be gone through without limitation, and the opportunity for tyranny and oppression and wrong and injustice would be absolutely unlimited.

Therefore it is a sound principle, one based upon the highest considerations of justice and humanity, that a man shall not be put in jeopardy more than once. In other words, whenever a case has proceeded to the point where the machinery has been put in operation which at its conclusion would result either in a conviction or an acquittal the proceeding must go to its conclusion, and that conclusion must be final, and if before reaching the ordinary stage of finality the case breaks down the defendant goes free. That is the soundest of principles, one recognized universally in all of the countries at least drawing their legal institutions from the same source that we do.

Now, Mr. President, what this bill seeks is in no manner to contravene that great fundamental principle, one which should be forever inviolate, and one which no member of the Judiciary Committee, I am sure, and no member of the Senate would for a moment desire in the least to infringe upon.

The sole purpose of this bill is to enact a law by which an erroneous decision by a judge may be corrected without in any manner infringing upon the rights of the defendant. If any lawyer here will examine the bill and analyze it he will see that the committee, after the most careful and long-continued and painstaking investigation, has limited the action of the bill to a review by the court purely of a legal question, without in any manner affecting the rights of the man whose case gave rise to that question.

Mr. MALLORY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Florida?

Mr. BACON. I do.

Mr. MALLORY. In reference to the point the Senator is on, I should like to call his attention to the provision regarding overruling or sustaining a special plea in bar in the following language:

> From the decision or judgment sustaining a special plea in bar when the defendant has not been put in jeopardy.

I am asking merely for information, not with any intention——

Mr. BACON. That language was inserted in the bill just out of abundance of caution.

Mr. MALLORY. I should like to inquire of the Senator if a party has been arraigned and filed a plea he is not in jeopardy, having been put in jeopardy by the very fact and he has been arraigned and required to plea? If that is so, then I do not see why this provision is inserted at all.

Mr. BACON. There may be cases in which that is true. It may be generally the case that it is true. If so, there is no prejudice to the prisoner, because it is expressly limited to a case where he has not been put in jeopardy. Therefore, unless there arose a case where there has been a decision upon a plea where he has not been in jeopardy this bill would not apply. That clause is only put in the bill, as I said, out of abundance of caution—caution on the two sides. In the first place, if there has been a decision of such a plea relating to a matter of law where the party has not been put in jeopardy, there ought to be an opportunity to have that question decided by the ultimate court. On the other hand, if it is a plea where he has been put in jeopardy, the desire to have that question decided shall not prevail, and the man must go free.

So it does seem to me the language of the proposed law, whether the suggestion of the Senator is correct or not that in all cases he is put in jeopardy, absolutely relieves the case from any possibility of injury to the defendant.

Mr. HALE. At any rate, if the Senator will allow me——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Maine?

Mr. BACON. I do.

Mr. HALE. At any rate, the accused, the single man, the one man who is brought before the court upon a solemn indictment, if there has been just such a ruling as the Senator wants an appeal taken from, and the accused has been discharged, that heretofore has been the end of it, has it not?

Mr. BACON. Yes.

Mr. HALE. Now, the Senator does not want that to be the end of it?

Mr. BACON. I beg the Senator's pardon.

Mr. HALE. He wants the Government to come in.

Mr. BACON. I said "yes" too quickly, I think. Not necessarily so. If there was a demurrer to an indictment and it was sustained, it is not necessarily an end to it, because there could be a new indictment found; but at the same time, in the finding of a new indictment there would be no opportunity to have the Supreme Court pass upon the question of law which was involved in it.

Mr. HALE. The Senator from Georgia is giving a very good argument against the necessity for this. The Government may have a new indictment now.

Mr. BACON. Yes.

Mr. HALE. But to say—and the Senator from Florida [Mr. MALLORY] had brought that point out very clearly—that a citizen, one person, is not put in jeopardy when he has been solemnly indicted and haled before a court——

Mr. BACON. Oh, no; the Senator is wrong about that. That is not what the law means by being put in jeopardy. It has an entirely different meaning.

Mr. HALE. If a proceeding takes place under that and he is discharged, heretofore that has been the end of it.

Mr. BACON. No; the Senator is mistaken as to both. It is not necessarily the end of it. He is not put in jeopardy. That is not what the law means by being put in jeopardy at all. The words "being in jeopardy." are entirely a technical phrase, which does not relate to the fact that a man is in danger as soon as an indictment is preferred against him.

Mr. HALE. Will the Senator tell the Senate if this does not give some additional power to the Government as against the accused?

Mr. BACON. No; in no manner whatsoever.

Mr. HALE. Then, wherein lies the necessity for it?

Mr. BACON. I will endeavor to state to the Senator. That is certainly a very pertinent question. If there is no necessity for the bill, then it is a useless bill. That has been already stated by the Senator from Minnesota [Mr. NELSON], and I will endeavor to restate, probably not so clearly, however, as he has stated it.

In the case where a man is indicted, and he is brought before the court and a demurrer is interposed before he is arraigned, upon the ground that the law under which he is charged with the commission of crime was unconstitutional, utterly null, and void, the judge sustains that demurrer and discharges the prisoner. Now, if that affected only that one prisoner, it would be a matter of comparatively slight importance; but it not only affects that prisoner, not only affects the accused in that particular case, but it affects all other persons who may assume to violate the same law; and a law of Congress is set aside, made absolutely null and void and inoperative by the decision of one judge, without the opportunity for the nine judges who sit in the Supreme Court to pass upon the great question whether or not——

Mr. HALE rose.

Mr. BACON. If the Senator will pardon me a moment—whether or not the law solemnly enacted by Congress is or is not constitutional, affecting not simply that accused, affecting not simply all others who may be accused, but affecting the operation of the law of the land, and affecting all interests which are to be affected by that law, and utterly destroying all the protection which that law seeks to throw over the persons, the property, and the transactions of all citizens of the United States.

Mr. HALE. But has not that always been the case heretofore?

Mr. BACON. Certainly. It is one of the evils which have grown up, and for that reason, and for the correction of such evils solely, without contravening the fundamental principle to which I alluded in the beginning, the necessity has grown up—the great importance, I will say, because the Senator might not recognize the propriety of the word "necessity"—the great importance has grown that the question of the constitutionality of a law shall not be limited to the decision of one judge, and he possibly the most inferior in rank of all the judges, but that it may go to this great court.

The Senator will perceive that there is no way to get a question to this court because, as the law now stands, when the inferior judge determines the law to be unconstitutional, the matter is ended. The sole purpose of this is, and the sole effect of it will be, to enable the highest court in the land to pass upon a naked law question in a manner that shall in no wise affect the rights or interests of the party against whom the accusation has been made and he in no manner be put twice in jeopardy.

Mr. HALE. Mr. President——

Mr. BACON. I hope the Senator will pardon me a moment, because it is impossible to present this subject without doing so with some degree of continuity. I do not want the Senator to misunderstand me in that; but I want to read to the Senator what the law means when it speaks of being placed in jeopardy. I am indebted to the Senator from Pennsylvania [Mr. KNOX], who very kindly turned to the law dictionary and has put in my hands this definition:

> A person once placed upon his trial before a competent court and jury, charged with his case upon a valid indictment, is in jeopardy, in the sense of the Constitution, unless such jury be discharged without rendering a verdict, from a legal necessity, or from cause beyond the control of the court, such as death, sickness, or insanity of some one of the jury, the prisoner, or the court, or by consent of the prisoner. (People *v.* Webb, 38 Cal., 467.)
>
> When a person is placed on trial upon a valid indictment, before a competent court and jury, he is put in jeopardy; and the discharge of the jury without verdict, unless by consent of the defendant, or from some unavoidable accident or necessity, is equivalent to an acquittal. Among these unavoidable necessities are the inability of the jury to agree after a reasonable time for deliberation; also the close of the term of the court. (Exp. McLaughlin, 41 Cal., 211; People *v.* Cage, 48 ib., 324.)
>
> If a person is indicted for manslaughter, and, on his trial, the court, without the consent of the defendant, discharges the jury upon the ground that the evidence shows that the defendant is guilty of murder, the defendant has been put in jeopardy. He can not be again indicted for murder for the same killing, but is entitled to an acquittal. (People *v.* Hunckeler, 48 Cal., 331.)
>
> Whenever a person has been given in charge, on a legal indictment, to a regular jury, and that jury is unnecessarily discharged, he has been once put in jeopardy, and the discharge is equivalent to a verdict of acquittal. (Wright *v.* State, 5 Ind., 290; McCorkle *v.* State, 14 ib., 39; s. p. Heikes *v.* Commonwealth, 26 Pa. St., 513; United States *v.* Shoemaker, 2 McLean, 114.)
>
> Where a valid indictment has been returned by a competent grand jury to a court having jurisdiction, the defendant has been arraigned and pleaded, a jury impaneled, sworn, and charged with the case, and all the preliminary things of record are ready for the trial, the jeopardy has attached.

Mr. SPOONER. From what is the Senator reading?

Mr. BACON. I am reading a definition from Abbott's Law Dictionary, page 650. These are quotations from the decisions of the courts, which I am upon now, which have been cited by the author as illustrations of the cases in which there has been jeopardy.

Mr. HALE. Will the Senator read that last statement again in regard to the proceedings in court——

Mr. BACON. I will reread it.

Mr. HALE. Which shows what has taken place; and when, if it has taken place, the feature of jeopardy attaches?

Mr. BACON. I think it does.

Mr. HALE. Will the Senator please read that again?

Mr. BACON. I will read it again; but it is directly in the line of what I said before I began the reading. This definition of what constitutes being put in jeopardy—that is to say, even if the case broke down before reaching the ordinary stage of finality the right which arose out of "having once been put in jeopardy" attaches and the prisoner goes free.

I will read that again, because it is very material, as it evidently struck the mind of the Senator from Maine. I will begin again, as I was interrupted in the middle of it:

> Where a valid indictment has been returned by a competent grand jury to a court having jurisdiction, the defendant has been arraigned and pleaded, a jury been impaneled, sworn, and charged with the case, and all the preliminary things of record are ready for the trial, the jeopardy has attached; and, unless the defendant waives his constitutional right, or unforeseen circumstances withdraw from him the benefit of the privilege, any subsequent lapse or error in the proceedings of the court will entitle him to be discharged from custody. (Morgan *v.* State, 13 Ind., 215.)

There is a very clear statement of the preliminary proceedings which, when proceeded with or gone into, will entitle the party to an acquittal and protect him against any future prosecution. But the particular feature to which I desire to call the attention of the Senator from Maine and other Senators who are unfavorable to the consideration or the passage of this bill is this: That with that clear statement made now of these preliminary proceedings, an examination of this bill will show that there is no question which in any manner relates to any of the particular proceedings enumerated and specified there which under this bill could be carried to the Supreme Court—in other words, every question which can be taken under this bill to the Supreme Court is a question which arose before any single one of the things mentioned in this very clear description of what constitutes jeopardy. That is the case of Morgan *v.* The State (13 Ind., p. 215).

Mr. RAYNER. I should like to ask the Senator whether there has every been any decision of the Supreme Court as to what constitutes "jeopardy" in a criminal case? I should like to know, if the Senator can answer.

Mr. BACON. I have not examined this particular question with reference to its being brought to the attention of the Senate upon authority, and therefore I am not prepared to answer the question at this time. I presume it is more than probable that the distinguished Senator from Pennsylvania [Mr. KNOX] can answer specifically; but that does not leave the matter in doubt as to what constitutes jeopardy.

Mr. RAYNER. I know there is a vast conflict of decision in the States, and I should like to ask the Senator from Pennsylvania [Mr. KNOX] whether he recalls any decision of the Supreme Court which defines the word "jeopardy?"

Mr. KNOX. No; I do not.

Mr. RAYNER. Neither do I recall any at this time.

Mr. BACON. But, Mr. President, I am quite confident of one thing—absolutely confident—that there can be no decision found which will hold that either one of the particular things specified here as a decision from which there can be an appeal—no one of them has ever been specified by a court as having put a party in jeopardy.

Mr. RAYNER. I should like to ask the Senator, if he will allow me to do so——

Mr. BACON. Certainly; and the Senator need not ask permission.

Mr. RAYNER. I merely asked——

Mr. BACON. But the Senator asked it in a way as if he doubted whether or not I would grant it.

Mr. RAYNER. Oh, no; I did not doubt it at all; in fact, I would not have asked it if I had not known the Senator would grant it.

On line 15 and 16 the bill provides—

> From the decision arresting a judgment of conviction for insufficiency of the indictment.

Can a man be put in jeopardy on a motion for an arrest of judgment?

Mr. BACON. Mr. President——

Mr. NELSON. Will the Senator from Georgia yield to me for a moment?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. BACON. I do.

Mr. NELSON. I desire to call the attention of the Senator from Maryland [Mr. RAYNER] to the fact that the motion in arrest of judgment is made by the defendant. When he asks for that relief, he has waived his constitutional right, and it was so decided by the Supreme Court in the case of Ball *v.* The United States, 163 United States Reports. The defendant had moved an arrest of judgment and had the proceedings stayed. An appeal was taken to the Supreme Court, and the Supreme Court held that the motion was good because the indictment was bad, and the party could be reindicted and retried for that offense because it was done on his own request, on his own motion; otherwise he could not be.

Mr. RAYNER. I should like to know on what page that is.

Mr. NELSON. I will give the Senator the case in a minute.

Mr. SPOONER. It is the Ball case.

Mr. NELSON. I will read the syllabus, with the permission of the Senator from Georgia.

Mr. RAYNER. What is the case?

Mr. NELSON. The United States *v.* Ball, 163 United States Reports.

Mr. RAYNER. What page?

Mr. NELSON. Page 662.

Mr. RAYNER. I should like to have the Senator from Minnesota read it, with the permission of the Senator from Georgia.

Mr. BACON. I think the Senator from Minnesota has properly answered it. The party is not protected, as the law now stands, against being tried again under the circumstances stated by the Senator.

Mr. NELSON. Will the Senator from Georgia allow me to read a part of the syllabus, and then I will not take up more of the Senator's time?

Mr. BACON. Certainly.

Mr. NELSON. I now read from the syllabus:

> A defendant in a criminal case, who procures a verdict and judgment against him to be set aside by the court, may be tried anew upon the same or another indictment for the same offense of which he was convicted.

Mr. BACON. Mr. President, I do not desire to occupy the attention of the Senate in any more protracted discussion of this question, because, as I stated in the beginning, I rather expected the argument to be made by other Senators. I had really but one object in addressing the Senate on this subject, and that was to call the attention of the Senate to the great principle involved in the rule, so well honored and which no one would desire in any manner to infringe upon, that a man shall not be twice put in jeopardy, and to emphasize as strongly as I could my own attitude that under no circumstances would I support any bill which put a man twice in jeopardy; under no circumstances would I take away from any defendant, as I understand the law, any right he now has. I do not consider this bill in any particular to take away from any defendant any right that he now enjoys or that it removes from him any single protection that our very humanitarian system of law has thrown around the accused. I would have him still under every particle of protection of the law which the present provisions of the law give to him, and under no circumstances would I consent to take away from him a single one of those rights.

But I do consider it to be of the very highest importance, not only as a particular question which may affect a particular class of offenders, but as a general principle, that wherever there is a decision saying that an act of Congress is unconstitutional, that question shall not be determined finally by the most inferior in rank of judges, but that it shall come ultimately to the highest court provided especially for the determination of such great fundamental questions.

Mr. HALE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Maine?

Mr. BACON. I yield with pleasure to the Senator. I will yield the floor, unless the Senator wishes to ask me a question.

Mr. HALE. I do not wish to ask a question. I simply wish to say, Mr. President, as in the beginning, I do not propose to discuss this matter, and I do not expect to arrest the passage of the bill, notwithstanding all that has been said that I do not like this departure. I do not like this feature of giving what the Government has never had, an appeal in criminal cases at any stage. I am willing to take the execution of the law, the administration of the law, under the rule that has obtained always with English-speaking peoples. Without any more time, I simply say that I desire an opportunity to vote against the bill.

Mr. McCUMBER. Mr. President, for the last few years Congress has been pressing its own powers and Federal jurisdiction over fields heretofore occupied by the jusisdiction of the States, upon the ground, mainly, that the Congress was in advance of the States in all legislation and that our changing conditions required such action. The rule seems to have been reversed in this particular instance, because in the field of criminal jurisprudence the States themselves seem to have taken the advance, and for many years we have had appeals by the States in criminal prosecutions in matters of sustaining demurrers and in matters of orders sustaining motions in arrest of judgment, wherever the motion was based on constitutional grounds.

Mr. President, there are many good reasons for this. It is not putting the defendant in jeopardy twice. Take the case of a demurrer. The defendant is not in jeopardy until a trial has begun before a jury and upon a proper indictment. He will not be put in jeopardy in the case of an arrest of judgment, if this bill becomes a law, for after a jury has found the defendant guilty, the case will be continued if a motion in arrest of judgment is sustained until that motion can be heard.

Mr. President, there is another reason for the enactment of this bill——

Mr. RAYNER rose.

Mr. McCUMBER. I just want to express this opinion, and then I will yield: As it is under the present system a defendant in the State of Illinois may be found guilty, but upon a motion in arrest of judgment on constitutional grounds he is discharged. In the State of Iowa another defendant may be convicted and a motion in arrest of judgment upon the same constitutional grounds overruled. Therefore we have a conviction in one State and an acquittal in another State for exexactly the same kind of an offense and upon purely a legal technicality—that is, as to whether or not the law is constitutional.

Mr. President, the defendant ought not always to be compelled to take the appeal. If an appeal had been allowed in a case of that kind upon the judgment of the court in the State of Illinois, probably before the defendant would have been tried in the State of Iowa the Supreme Court would have determined whether the law was constitutional, and therefore would not compel the defendant in the State of Iowa to go to the expense of taking this appeal. Certainly I can not understand how a person is put twice in jeopardy under any of the provisions of this bill, and I never could understand why the State should not be allowed to take an appeal from a judgment of an inferior court on the question of the sufficiency of an indictment, especially when the question is a constitutional question.

Mr. CARTER. Mr. President, under our Constitution any person accused of crime is entitled as a matter of right to a speedy trial. It seems that this bill as at present framed is subject to the objection that the Government might by neglect make the appeal the means of prolonging the period of waiting for final trial. To the end that this particular objection may be met, I suggest that in line 20, after the word "cases," a semicolon be substituted for the period and the following amendment added:

> Appeals in all such cases shall be taken within thirty days, shall be diligently prosecuted, and shall have precedence over all other appealed cases.

I can readily understand how, by mere neglect or inaction on the part of the Government, a defendant could be kept indefinitely awaiting trial. That would seriously impair or invade a distinct constitutional right of the defendant. I can not conceive any objection to this expediting of appeals in such cases, because in the nature of things appeals must be perfected and disposed of before the defendant will be entitled to a trial on the merits. If the bill is in position at this time that it is subject to an amendment, I will offer the amendment.

Mr. HALE. Let me ask the Senator——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Maine?

Mr. CARTER. Oh, certainly.

Mr. HALE. I am very glad the Senator has made the suggestion. Is it not one of the inevitable results of obtruding the appeal by the Government and arresting proceedings that a prosecuting officer, unless some such amendment is adopted as the Senator has offered, may indefinitely prolong the condition of suspense of the accused and at last wear him out? Is it not a part of the proposition on which we have always gone that the accused shall have a speedy trial and, in that regard, is not time

a matter of the most essential importance in protecting the liberty of the citizen and the presumption, until he is convicted, that he is innocent?

Mr. CARTER. Certainly. The Senator's suggestion brings us back to the old and time-honored saying that "justice deferred is justice denied." I can readily perceive how through this appeal a defendant could be made to suffer indefinite suspense, and, as the Senator suggests, be utterly worn out in waiting a hearing or a day in court on the merits of the case presented against him.

I presume the amendment will be acceptable. I can conceive of no objection to it. It proposes that this character of appeal shall take precedence over all other pending appeals. I think that principle should obtain. I believe it would be better by far to allow the Government an appeal, so as to settle the law in future cases, even after the disposition of the defendant in the particular case, than to allow the judgment in the particular case in which the ruling obtained upon indictment in nisi prius court to be effective as to the Government without an opportunity to settle the law as to future cases of like character.

The VICE-PRESIDENT. The Senator from Montana proposes an amendment, which will be stated.

The SECRETARY. On page 2, line 20, after the word "cases," it is proposed to strike out the period and insert a semicolon and the following:

Appeals in all such cases shall be taken within thirty days, shall be diligently prosecuted, and shall have precedence over all other appealed cases.

Mr. NELSON. I can see no objection to the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. BACON. I ask the Senator if the phraseology ought not to be changed so as to include writs of error?

Mr. NELSON. Yes; writs of error should be included.

The VICE-PRESIDENT. The Secretary will report the proposed amendment as modified.

The SECRETARY. It is proposed to modify the amendment, after the word "appeals," by inserting the words "or writs of error;" so as to make it read:

Appeals or writs of error in all such cases shall be taken within thirty days, shall be diligently prosecuted, and shall have precedence over all other appealed cases.

Mr. HALE. Let the Secretary read the text of the bill, so that we may see where this proposition, which certainly improves the bill very much, comes in.

The VICE-PRESIDENT. The Secretary will read as requested by the Senator from Maine.

Mr. NELSON. I will say to the Senator from Maine that it comes in at the end of these provisions and governs all of them.

Mr. HALE. That is the point I want to see—where it comes in.

The SECRETARY. At the end of line 20, page 2, of the bill.

Mr. NELSON. At the end of the provisions relating to appeals.

Mr. HALE. What is the text of the bill immediately preceding that? I do not ask to have the entire bill read, but only that part of it.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

From the decision or judgment quashing or setting aside an indictment;

From the decision or judgment sustaining a demurrer to an indictment or any count thereof;

From the decision arresting a judgment of conviction for insufficiency of the indictment;

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

The SECRETARY. Then it is proposed to insert——

Mr. HALE. Now read the amendment.

The Secretary read as follows:

Appeals or writs of error in all such cases shall be taken within thirty days, shall be diligently prosecuted, and shall have precedence over all other appealed cases.

Mr. HALE. So it will apply to all of the cases that are stated where the Government may intervene by appeal?

Mr. NELSON. Certainly. It applies to every one of them.

Mr. MALLORY. I should like to inquire of the Senator from Minnesota what disposition will be made of the defendant or the prisoner in the event of the quashing of the indictment, in the event of granting a motion in arrest of judgment for insufficiency of the indictment, and an appeal to the Supreme Court by the Government is pending? What becomes of the party who has just been practically acquitted? Is there any way of holding him in custody?

Mr. NELSON. I presume in those cases the defendant would be under bond, and his bond would hold him.

Mr. MALLORY. But he has been acquitted practically by the granting of the motion in arrest of judgment. That sets him free. He has no bond. Then the granting of a motion in arrest of judgment is not equivalent to an acquittal?

Mr. NELSON. The motion is made by the defendant.

Mr. CARTER. Mr. President, the amendment offered has been accepted, but I will make a statement of the time that may be occupied under existing law in perfecting one of these appeals. An appeal from a circuit court of the United States to the circuit court of appeals may be taken within six months, if my memory serves me correctly; it may be one year. To the Supreme Court of the United States an appeal may be taken at any time within two years. So it is obvious that the defendant, waiting for six months in the first instance and two years thereafter for the appeal to come up from the circuit court would be in rather an unfortunate position.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Montana [Mr. CARTER] as modified.

The amendment as modified was agreed to.

Mr. RAYNER. Before the bill is put upon its passage, may we hear the amendment of the Senator from Montana again? It has become a part of the bill. I will ask the Secretary to read it slowly.

The VICE-PRESIDENT. It will again be stated.

The SECRETARY. At the end of line 20, page 2, it is proposed to insert the following:

Appeals or writs of error in all such cases shall be taken within thirty days, shall be diligently prosecuted, and shall have precedence over all other appealed cases.

Mr. WHYTE. Has the bill passed beyond the stage when amendments can be offered?

The VICE-PRESIDENT. It has not. The bill is in the Senate and open to amendment.

Mr. WHYTE. It is still open to amendment?

The VICE-PRESIDENT. It is still open to amendment.

Mr. WHYTE. Mr. President, I think if the Government gets a change in the practice in the courts of the United States, which has lasted for more than a century, it ought to be limited in the character of that change; and I shall move to strike out all of the provisions in regard to appeals except the one in lines 13 and 14, on page 2, which is this:

From the decision or judgment sustaining a demurrer to an indictment or any count thereof.

For that purpose I propose to strike out the provisions in lines 11 and 12:

From the decision or judgment quashing or setting aside an indictment.

And lines 15 and 16:

From the decision arresting a judgment of conviction for insufficiency of the indictment.

And lines 17 and 18:

From the decision or judgment sustaining a special plea in bar when the defendant has not been put in jeopardy.

I confess I am a little surprised at that clause, because of the fact that I presume a question of fact would arise on a special plea in bar, as, for instance, limitations; and therefore the defendant has been put in jeopardy. When he reaches the point that that fact saves him the indictment is found too late.

And beyond that I propose a change of verbiage, so as to make the amendment of the Judiciary Committee conform to the proposed amendments.

The VICE-PRESIDENT. The Senator from Maryland proposes amendments which will be stated by the Secretary.

The SECRETARY. Strike out lines 11 and 12, lines 15 and 16, and lines 17 and 18.

Mr. SPOONER. Strike out what?

Mr. WHYTE. On page 2 of the bill strike out lines 11 and 12, lines 15 and 16, and lines 17 and 18. I do not propose to strike out lines 19 and 20. I only amend it also by making it in the singular instead of the plural:

In this instance the United States shall be entitled to a bill of exceptions as in civil cases.

Mr. RAYNER. That leaves only lines 11 and 12?

Mr. WHYTE. It leaves only this:

From the decision or judgment sustaining a demurrer to an indictment or any count thereof.

That gives the Government of the United States the trial of any question that arises upon the indictment itself, which is a matter of record, and I do not think the Government of the United States at this time ought to be entitled to a bill of exceptions on testimony, including the rulings of the court as to the admission or rejection of testimony. I think it ought to be confined to the strictly legal question arising on the indictment itself.

Mr. NELSON. Mr. President, the amendments proposed by the Senator from Maryland [Mr. WHYTE] would utterly destroy the bill. It happens in many cases that the defendant instead of moving to set aside the indictment or to quash it and instead of demurring withholds all his objections to the indictment until after verdict, and then makes a motion in arrest of judgment on account of the insufficiency of the indictment.

Mr. WHYTE. Will the Senator from Minnesota yield to me for a moment?

Mr. NELSON. Certainly.

Mr. WHYTE. The clause expressly provides that he can only raise the question by a demurrer.

Mr. NELSON. No.

Mr. WHYTE. It reads:

That hereafter all objections to the sufficiency of the indictment in matters of form only shall be made and determined prior to the impaneling of the jury.

Mr. NELSON. That relates only to matters of form and not to the substance of the indictment. The amendments of the Senator from Maryland are bad, and if adopted the bill will be utterly useless.

The VICE-PRESIDENT. The Secretary will again state the amendments proposed by the Senator from Maryland [Mr. WHYTE].

The SECRETARY. In line 10, page 2, strike out "instances" and insert "instance;" strike out lines 11 and 12, 15 and 16, 17 and 18, and change line 19 so as to read:

In this instance the United States shall be entitled to a bill of exceptions, as in civil cases.

The VICE-PRESIDENT. The question is on agreeing to the amendments proposed by the Senator from Maryland. [Putting the question.] By the sound, the noes have it.

Mr. CLAY. A division!

Mr. HALE. Let us have the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. WARREN (when his name was called). I have a pair with the senior Senator from Mississippi [Mr. MONEY], and therefore withhold my vote.

The roll call was concluded.

Mr. CLARK of Wyoming (after having voted in the negative). I voted, not observing that the Senator from Missouri [Mr. STONE] was not in the Chamber. I withdraw my vote.

Mr. MORGAN. Mr. President, has the Senator from Iowa [Mr. ALLISON] answered to his name?

The VICE-PRESIDENT. The Senator from Iowa is not recorded.

Mr. MORGAN. I am paired with that Senator. If he were present, I should vote "yea." I have no right to vote in his absence.

Mr. CLARK of Wyoming. I will transfer my pair to the Senator from New York [Mr. PLATT], and will vote. I vote "nay."

Mr. LONG (after having voted in the negative). I desire to inquire if the senior Senator from Idaho [Mr. DUBOIS] has voted?

The VICE-PRESIDENT. He has not voted.

Mr. LONG. I have a pair with the senior Senator from Idaho. I transfer the pair to the junior Senator from Rhode Island [Mr. WETMORE], and will permit my vote to stand.

The result was announced—yeas 14, nays 40, as follows:

YEAS—14.

| | | | |
|---|---|---|---|
| Blackburn | Heyburn | Mallory | Tillman |
| Clay | Kean | Pettus | Whyte |
| Frazier | Latimer | Rayner | |
| Hale | McCreary | Taliaferro | |

NAYS—40.

| | | | |
|---|---|---|---|
| Allee | Clark, Wyo. | Foster | Mulkey |
| Ankeny | Clarke, Ark. | Fulton | Nelson |
| Bacon | Crane | Hemenway | Overman |
| Brandegee | Curtis | Kittredge | Patterson |
| Bulkeley | Depew | Knox | Perkins |
| Burnham | Dick | La Follette | Piles |
| Carmack | Dillingham | Lodge | Scott |
| Carter | Dolliver | Long | Simmons |
| Clapp | Du Pont | McCumber | Spooner |
| Clark, Mont. | Flint | Millard | Warner |

NOT VOTING—35.

| | | | |
|---|---|---|---|
| Aldrich | Daniel | Hopkins | Platt |
| Allison | Dryden | McEnery | Proctor |
| Bailey | Dubois | McLaurin | Smoot |
| Berry | Elkins | Martin | Stone |
| Beveridge | Foraker | Money | Sutherland |
| Burkett | Frye | Morgan | Teller |
| Burrows | Gallinger | Newlands | Warren |
| Culberson | Gamble | Nixon | Wetmore |
| Cullom | Hansbrough | Penrose | |

So Mr. WHYTE's amendments were rejected.

Mr. NEWLANDS. Mr. President, I was struck by the inquiry made by the Senator from Florida [Mr. MALLORY] of the Senator from Minnesota [Mr. NELSON] as to what would be the effect of the appellate proceedings on the defendant pending the appeal; and I understood the Senator from Minnesota to say that the defendant would doubtless be released on bond. As the law now stands, of course the defendant would be acquitted and would be entitled to his release, and it seems to me that, so far as the defendant is concerned, we should not put him in any worse condition by reason of the appeal than he would have been in had the proposed law not been passed. I suggest, therefore, the following amendment. After line 21 I move to insert:

In all such instances of appellate proceedings the defendant, pending the same, shall be released on his own recognizance.

It seems to me the plain purpose of the bill is to obtain a decision by the highest court of the land, and that its purpose is not to oppress the defendant in any pending case. As it stands to-day the order or judgment complained of would immediately release the defendant. If, then, we are going to subject him to all the embarrassment and oppression and anxiety of delay, why should we not, pending the proceedings, permit him to be released on his own recognizance?

Mr. KNOX. I wish to ask the Senator from Nevada a question. Does he not think that in the absence of a provision in the statute making the appeal a supersedeas the defendant would go free?

Mr. KEAN. Mr. President, we can not hear the Senator from Pennsylvania.

Mr. NEWLANDS. I am not prepared to say.

Mr. KNOX. That is my own judgment about it.

Mr. NEWLANDS. If there is any doubt about it, I would prefer to make it certain in the law. The answer of the Senator from Minnesota seemed to imply that the defendant could be released, but only upon bond.

Mr. NELSON. I move to lay the amendment on the table.

Mr. BACON. Mr. President——

Mr. NELSON. I withdraw the motion.

Mr. BACON. I hope the Senator from Minnesota will not make that motion.

Mr. NELSON. I withdraw it.

Mr. BACON. Mr. President, I think the end to be accomplished by this bill is incorrectly stated by the Senator from Nevada [Mr. NEWLANDS], that we may have the opportunity to settle important questions of law. It does not relate so much to the fortunes of the particular party who may be accused, so far as the desire of the Government may be to prosecute him ultimately. I agree with the Senator from Pennsylvania that that would be the effect of the bill as it now stands. I think the great object had in view by the provisions of the bill will be accomplished substantially even if a particular prisoner does go free. I would very much prefer to run the risk of his going free without final trial rather than that this bill should not be passed in such shape that these questions may be ultimately determined by the court of last resort.

Therefore, while I will not do anything more than make a suggestion to the Senator from Minnesota as a friend to the bill, I trust that he will not make the motion to lay the amendment on the table. On the contrary, I would rather accept it, if I were in charge of the bill.

Mr. NELSON. In view of the suggestion of the Senator from Georgia I withdraw the motion and will let the proposition be voted upon directly.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Nevada [Mr. NEWLANDS].

Mr. KEAN. Let it be again stated.

The VICE-PRESIDENT. The Chair would suggest that the amendment would come properly after line 20 instead of after line 21, as suggested by the Senator from Nevada.

Mr. NEWLANDS. After line 20?

The VICE-PRESIDENT. After line 20. The Secretary will state the amendment.

The SECRETARY. After the amendment already adopted, line 20 on page 2, it is proposed to insert:

In all such instances of appellate proceedings the defendant, pending the same, shall be released on his own recognizance.

Mr. PILES. Mr. President, I offer as a substitute for the amendment the following:

Pending the appeal or writ of error the defendant may be in all proper cases admitted to bail or released on his own recognizance, in the discretion of the presiding judge.

I do not think that any man who is charged with murder, for instance, and who upon some technicality may have a demurrer sustained to the indictment, should be released on his own recognizance. Neither do I believe that a man who is charged with a serious crime or charged with violating any

law should, unless the judge who presides at the trial of the case thinks it is best, be put at liberty upon his own recognizance. It is a matter which should be left, in my judgment, to the discretion of the trial judge. The rights of the Government should be protected just the same as the rights of the individual. Every man should surrender something for the good of the country, and in order that no injustice may be committed against any man. Therefore I hope that the substitute will prevail and that the amendment will not.

Mr. BACON. Mr. President, I simply desire to say, in reply to the suggestion of the Senator from Washington [Mr. PILES], that the great purpose of the bill is to secure the ultimate decision of the court of final resort on questions of law, and at the same time in no manner to change the present status of an accused person by reason of that proceeding. Under the present law, when there has been a decision sustaining a demurrer or other similar proceedings, the accused undoubtedly goes without bond or without imprisonment, subject only to be rearrested when another indictment is found. It seems to me that the spirit of the amendment offered by the Senator from Nevada is in entire harmony with that fundamental thought in this bill to secure the decision ultimately of the question of law and at the same time not infringe upon any right that the defendant has under exising law.

For that reason I hope the substitute of the Senator from Washington will not be adopted, and that the amendment of the Senator from Nevada will be agreed to without amendment.

Mr. PILES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Washington?

Mr. BACON. Certainly.

Mr. PILES. I should like to ask a question. Is it not a fact that, under the amendment as proposed by the Senator from Nevada, the defendant may be released on his own recognizance in all cases?

Mr. BACON. In all cases.

Mr. PILES. Wherever there is an appeal?

Mr. BACON. Yes; in all cases. That is exactly what I should like to have done, in order that this bill may be absolutely freed from any possible feature by which any burden may be put upon a defendant other than that which now rests upon him under existing law. I want to have it cut entirely loose and to be free from any feature of that kind.

Mr. CARTER. Will the Senator permit a question?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Montana?

Mr. BACON. With pleasure.

Mr. CARTER. Under existing law, where an indictment is quashed, the court may order that the defendant be committed. In the exercise of that right, which all courts possess, the court may resolve itself into a committing magistrate for that purpose, having knowledge that a crime has been committed. The crime may be murder in the first degree. The indictment may have been quashed upon any technicality suggested by the Senator from Washington. Under the amendment proposed by the Senator from Nevada the right of the court to hold a defendant would be abridged. Unquestionably that can not be the intent of the Senator from Nevada.

Mr. BACON. I suppose that under existing law before a court could hold a defendant there must be some affidavit or some presentation of the matter before him which would authorize the issuance of a warrant.

Mr. CARTER. Unquestionably, but this——

Mr. BACON. And if so, that would exist now.

Mr. CARTER. But this amendment constitutes a change of existing law, which would limit the power of the court to hold the defendant regardless of the condition.

Mr. BACON. I should think that the only effect of it would be that so far as this particular proceeding was concerned the accused could not be held under that indictment, but the court would have the same right to issue another warrant and to require another commitment in that case as it would in this. It would be a proceeding independent of the authority given by the indictment which had been declared to be null and void.

Mr. NEWLANDS. Mr. President, I must confess that I bring myself with some reluctance to vote for this bill, but I am very anxious to avoid putting upon the defendant any additional burden. The bill necessarily puts upon him the burden of delay. I am not willing to put upon him the burden of a possible imprisonment unless he can secure bond. For that reason I favor a distinct statement in the bill that the appeal shall operate only for the purpose of procuring from the appellate court its construction as to the Constitution and not operate to put an additional burden and worng in the shape of an imprisonment upon the defendant. Under existing law when the order or judgment complained of is made the defendant is entitled to go free. It seems to me in shaping this law we ought to see to it that he is allowed to go upon his own recognizance pending the appeal.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed as a substitute by the Senator from Washington [Mr. PILES] to the amendment proposed by the Senator from Nevada [Mr. NEWLANDS].

Mr. CARMACK. I desire to have the substitute read.

The VICE-PRESIDENT. The Secretary will again read the proposed substitute.

The SECRETARY. In lieu of the amendment offered by the Senator from Nevada insert:

Pending the appeal on writ of error the defendant may be in all proper cases admitted to bail or released on his own recognizance, in the discretion of the presiding judge.

Mr. PILES. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from Virginia [Mr. MARTIN], and withhold my vote.

Mr. FLINT (when his name was called). I am paired with the junior Senator from Texas [Mr. BAILEY]. If he were present, I should vote "yea."

Mr. TALIAFERRO (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. SCOTT]. If he were present, I should vote "nay."

Mr. WARREN (when his name was called). I again announce my pair with the senior Senator from Mississippi [Mr. MONEY]. I will state while on my feet that I make the announcement for the day, as I may not be in the Chamber at subsequent roll calls.

The roll call was concluded.

Mr. HANSBROUGH. Has the senior Senator from Virginia [Mr. DANIEL] voted?

The VICE-PRESIDENT. He has not voted.

Mr. HANSBROUGH. I have a pair with that Senator. I will take the liberty of transferring my pair to the senior Senator from New Hampshire [Mr. GALLINGER], who is absent, and I will vote. I vote "yea."

Mr. CLAPP (after having voted in the affirmative). I voted under the assumption that the Senator from North Carolina [Mr. SIMMONS], with whom I have a general pair, was in the Chamber. I will transfer my pair to the junior Senator from New Jersey [Mr. DRYDEN] and let my vote stand.

Mr. ALLISON. I am paired with the senior Senator from Alabama [Mr. MORGAN]. I do not see him in his seat and withhold my vote.

The result was announced—yeas 29, nays 23, as follows:

YEAS—29.

| | | | |
|---|---|---|---|
| Allee | Curtis | Kean | Perkins |
| Ankeny | Dick | Kittredge | Piles |
| Brandegee | Dillingham | Knox | Spooner |
| Bulkeley | Dolliver | Lodge | Sutherland |
| Burnham | Flint | Long | Warner |
| Carter | Fulton | McCumber | |
| Clapp | Hansbrough | Mulkey | |
| Clark, Wyo. | Heyburn | Nelson | |

NAYS—23.

| | | | |
|---|---|---|---|
| Bacon | Culberson | La Follette | Patterson |
| Blackburn | Du Pont | Latimer | Pettus |
| Burkett | Foster | McCreary | Rayner |
| Carmack | Frazier | Mallory | Tillman |
| Clarke, Ark. | Frye | Newlands | Whyte |
| Clay | Hale | Overman | |

NOT VOTING—37.

| | | | |
|---|---|---|---|
| Aldrich | Depew | McLaurin | Simmons |
| Allison | Dryden | Martin | Smoot |
| Bailey | Dubois | Millard | Stone |
| Berry | Elkins | Money | Taliaferro |
| Beveridge | Foraker | Morgan | Teller |
| Burrows | Gallinger | Nixon | Warren |
| Clark, Mont. | Gamble | Penrose | Wetmore |
| Crane | Hemenway | Platt | |
| Cullom | Hopkins | Proctor | |
| Daniel | McEnery | Scott | |

So Mr. PILES's amendment to the amendment of Mr. NEWLANDS was agreed to.

The VICE-PRESIDENT. The question recurs on the amendment proposed by the Senator from Nevada [Mr. NEWLANDS] as amended.

Mr. HEYBURN. I understand that the substitute having been adopted, it disposes of the amendment of the Senator from Nevada.

The VICE-PRESIDENT. The question now is on the amendment offered by the Senator from Nevada [Mr. NEWLANDS] as modified by the amendment proposed by the Senator from Washington [Mr. PILES].

Mr. BACON. I understand the effect of the vote which we

have just taken is to put the amendment offered by the Senator from Washington in the place of the amendment offered originally by the Senator from Nevada.

The VICE-PRESIDENT. That is the effect of the vote.

Mr. BACON. It is adopted as a substitute for it and displaces it. Consequently what we are now called to vote upon is the amendment offered by the Senator from Washington.

The VICE-PRESIDENT. That is the effect of it. The question is on agreeing to the amendment as amended.

Mr. PILES. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CLARK of Wyoming (when his name was called). I am paired with the junior Senator from Missouri [Mr. STONE]. I transfer my pair to the senior Senator from New York [Mr. PLATT] and vote "yea."

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from Virginia [Mr. MARTIN]. I transfer my pair to the Senator from New Hampshire [Mr. GALLINGER] and vote "yea."

Mr. TALIAFERRO (when his name was called). I again announce my pair with the junior Senator from West Virginia [Mr. SCOTT]. If he were present, I should vote "nay."

The roll call was concluded.

Mr. CLAPP. I transfer my pair with the Senator from North Carolina [Mr. SIMMONS] to the junior Senator from New Jersey [Mr. DRYDEN]. I vote "yea."

The result was announced—yeas 33, nays 21, as follows:

YEAS—33.

| | | | |
|---|---|---|---|
| Allee | Cullom | Kittredge | Perkins |
| Allison | Curtis | Knox | Pettus |
| Ankeny | Dick | La Follette | Piles |
| Brandegee | Dillingham | Lodge | Spooner |
| Bulkeley | Dolliver | Long | Sutherland |
| Burnham | Flint | McCumber | Warner |
| Carter | Fulton | Morgan | |
| Clapp | Heyburn | Mulkey | |
| Clark, Wyo | Kean | Nelson | |

NAYS—21.

| | | | |
|---|---|---|---|
| Bacon | Clay | Latimer | Rayner |
| Blackburn | Culberson | McCreary | Tillman |
| Burkett | Du Pont | Mallory | Whyte |
| Carmack | Foster | Newlands | |
| Clark, Mont | Frazier | Overman | |
| Clarke, Ark | Frye | Patterson | |

NOT VOTING—35.

| | | | |
|---|---|---|---|
| Aldrich | Dubois | McEnery | Scott |
| Bailey | Elkins | McLaurin | Simmons |
| Berry | Foraker | Martin | Smoot |
| Beveridge | Gallinger | Millard | Stone |
| Burrows | Gamble | Money | Taliaferro |
| Crane | Hale | Nixon | Teller |
| Daniel | Hansbrough | Penrose | Warren |
| Depew | Hemenway | Platt | Wetmore |
| Dryden | Hopkins | Proctor | |

So Mr. NEWLANDS's amendment as amended was agreed to.

The VICE-PRESIDENT. The Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. Table Calendar 26, Senate resolution 214, by Mr. CARTER.

Mr. NELSON. I ask that the unfinished business be temporarily laid aside.

Mr. HEYBURN. I should like to inquire if it is the intention of the Senator from Minnesota to press the bill that has been under consideration to final passage this morning?

Mr. NELSON. I can not say just how far I will press it. My intention is to go on with it. It is getting late in the session, and in order to get such legislation enacted I should like to have it considered now.

Mr. HEYBURN. With the understanding that if the debate is prolonged the regular order will be called up, I will consent.

Mr. BLACKBURN. I will say to the Senator from Idaho that there are several other amendments to be offered to the bill.

Mr. HEYBURN. I anticipate it. I myself intend to offer one.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from Minnesota that the unfinished business be temporarily laid aside?

Mr. HEYBURN. I object.

The VICE-PRESIDENT. Objection is made. The unfinished business is before the Senate.

FRANCISCO KREBS—VETO MESSAGE.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read:

*To the Senate:*

Senate bill No. 5531, entitled "An act for the relief of Francisco Krebs," is returned herewith without approval for the reasons set forth in the following report from the Secretary of Commerce and Labor:

"In relation to Senate bill No. 5531, transferring Round Island, Mississippi, to Francisco Krebs, the Department hereby registers its objections to its passage. First, because it unduly restricts the extent of the light-house property on the island; second, because no means is specified in the bill for accurately determining the boundaries of the light-house property, and, third, because the Light-House Board has not authority over the growth of trees on the rest of the island, which might obscure its lights in certain directions. These objections are so important that the Department begs disapproval of the bill as passed."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 4, 1907.*

The VICE-PRESIDENT. The message will be printed. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. FRYE. It seems to me that the bill had better be referred to the committee that reported it.

The VICE-PRESIDENT. If there be no objection, the bill and message will be referred to the Committee on Private Land Claims, from which the bill was reported.

LORENZO F. HARMON.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying bill, referred to the Committee on Pensions, and ordered to be printed:

*To the Senate:*

In compliance with the resolution of the Senate (the House of Representatives concurring) of the 1st instant, I return herewith Senate bill No. 1879, entitled "An act granting an increase of pension to Lorenzo F. Harmon."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 4, 1907.*

ALICE M. STAFFORD—VETO MESSAGE.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read:

*To the Senate:*

I return herewith, without approval, Senate bill No. 2578 entitled "An act for the relief of Alice M. Stafford, administratrix of the estate of Capt. Stephen R. Stafford." The bill authorizes and directs the Secretary of the Treasury to pay Alice M. Stafford, administratrix of the estate of Capt. Stephen R. Stafford, late of the Fifteenth Regiment of Infantry, the sum of $1,371.87, that sum being the amount of money necessarily advanced and paid by him out of his own personal funds while post commissary at Fort Wingate, N. Mex., in the years 1879 and 1880, in order that the troops in said command might have fresh beef and necessary food during the fourteen months drought in which no rain fell in the region of said fort, and during which time the beef presented for issue by the beef contractor was of such poor quality as to be unfit for food for such command.

It appears from the records of the War Department that Captain Stafford, in the months of May and June, 1880, purchased beef in the open market to the amount of 10,975 pounds, at 12½ cents per pound, paying therefor $1,371.87 of Government funds. Of the amount so purchased he accounted on his returns for 4,975.75 pounds, of the value of $621.95, but failed to take up and properly account for 5,999.25 pounds, of the value of $749.92. This sum Captain Stafford failed to account for, though repeatedly directed to do so, whereupon the cost of the beef was charged against him in the settlement of his accounts and was adjusted by the stoppage of $749.92 from his pay.

It will thus appear that the sum of $1,371.87, which the Secretary of the Treasury is directed to pay to the administratrix of Captain Stafford's estate, exceeds the amount of the stoppage and does not accurately represent the amount which was deducted from his pay in the final settlement of his accounts.

As the inclosed bill vests no discretion in the Secretary of the Treasury to allow a less amount than $1,371.87 in settlement of the claim, but requires a sum to be paid to the beneficiary in the act that exceeds the amount stopped against Captain Stafford's pay, I am unable to give my approval to the bill, which is herewith returned.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 4, 1907.*

The VICE-PRESIDENT. The message will be printed. The question is, Shall the bill pass, the objection of the President of the United States to the contrary notwithstanding?

Mr. FRYE. I think the bill and message ought to be referred to the Committee on Claims. The committee may present a bill with an amendment. Evidently the sum of seven hundred and odd dollars is due the estate.

The VICE-PRESIDENT. The Senator from Maine moves that the bill and message of the President of the United States be referred to the Committee on Claims.

The motion was agreed to.

STATE PUBLIC SCHOOL SYSTEMS.

Mr. FRAZIER. Mr. President, on Thursday, February 7, immediately after the conclusion of the morning business, with the permission of the Senate, I shall call up Senate resolution 183, "*Resolved*, That in the opinion of the Senate this Government has no right to enter into any treaty with any foreign government relating in any manner to any of the public school systems of any of the States of the Union," etc., and I will submit some remarks upon the questions raised by the resolution.

COMMITTEE SERVICE.

Mr. BLACKBURN. I ask to have the senior Senator from Tennessee [Mr. CARMACK] assigned to duty upon the Committee on the District of Columbia to fill the vacancy occasioned by the retirement of the Senator from Oregon [Mr. Gearin].

The VICE-PRESIDENT. The Senator from Kentucky moves that the senior Senator from Tennessee [Mr. CARMACK] be appointed to the Committee on the District of Columbia in the place of Mr. Gearin.

The motion was agreed to.

ISSUANCE OF LAND PATENTS.

The Senate resumed the consideration of the resolution submitted by Mr. CARTER on the 9th ultimo, relating to the issuance of patents on homesteads, etc.

Mr. HEYBURN. Mr. President——

Mr. CLAPP. Will the Senator yield to me for a moment?

Mr. HEYBURN. Certainly.

Mr. CLAPP. I desire to state to the Senate that on the completion of the speech by the Senator from Idaho I shall move to proceed to the consideration of the Indian appropriation bill.

Mr. HEYBURN. Mr. President, on last Friday when the pending resolution was laid aside we had been engaged in the consideration of that feature of it which pertained to the forest reserves of the United States. It is my intention to-day to devote but very little more time to the consideration of that question in the discussion of this resolution. There is a bill pending before the Senate which by its terms provides that no more forest reserves shall be created by Executive order, but that they shall be created only pursuant to an act of Congress authorizing their creation. So I do not consider it important at this time to do more than connect the question of the forest reserves in their relation to the message which the President has sent to the Senate upon the public lands. I do desire, however, at this time to call attention to the fact that we already have something more than 127,000,000 acres of forest reserves in the United States, and the annual report of the Forester shows that in the State of Idaho alone there are upward of 18,000,000 acres of forest reserves. I could give the entire tabulated statement showing the number of acres in each State, but I do not at this time think it is necessary to do so.

WITHDRAWAL OF COAL LANDS.

I desire now to take up the question of the withdrawal of coal lands from purchase under existing law and the suspension of all action by the Interior Department upon the pending applications under existing law.

The effect of this official proclamation suspending action upon pending applications has resulted in the withdrawal of coal lands from entry to the extent of millions of acres, the quantity not yet determinable; but it has resulted in immensely enhancing the value of the coal lands already owned by private ownership; it has resulted in giving the existing coal operators an advantage which no governmental action should ever confer upon any portion of the citizens of the United States, because it is at the expense of the remaining portion of the citizens of the United States.

Mr. President, the coal lands in the hands of existing owners have been more than doubled in value by reason of this Executive order. Their owners have taken advantage of this Executive order to advance the price of coal in every coal market in the United States. They have attempted to account for this advance sometimes on the alleged scarcity of cars and sometimes on the alleged scarcity of labor, but for one reason or another the fact remains that the people are paying for it.

Then there is no promise of any relief at all from this condition. We are not informed by the Executive that in six months or twelve months or two years conditions will change so that these lands may be restored to the field of competition against existing rights, but we are left to conjecture as to what may happen, if anything may happen, in the future that will restore the public domain to the people who own it.

WHO OWN THESE COAL LANDS?

There is a spirit of demarcation running all through this message that distinguishes between the Government and the people; that seems to treat the people in a patronizing way, as though they were a troublesome element in the Government, ignoring the fact that the people are the Government. These coal lands do not belong to the political organization which we call the "Government;" they belong to the individuals who constitute the Government, and who delegated to their representatives the authority to enact such necessary legislation as would make available to them, upon equitable and reasonable distributive conditions, the use of these public utilities. Yet, as I say, there is running through it all that undercurrent of sentiment that the people are a troublesome element in the Government. The people are very apt to resent that spirit. It is the people who own these coal lands; and when, by Executive order, they are withdrawn from the people, they are very apt to inquire why and for how long. The message suggests that these lands be held permanently by the Government—these coal lands, oil lands—lands productive of the great necessities of life.

Why, Mr. President, I can imagine nothing more in conflict with or antagonistic to the principles of our Government than that the political machinery of the Government should seize that which belongs to all the people and set up storekeeping or mining or productive industries in competition with individual business interests and productive industries. There can be nothing more destructive of the rights of the people than that the Government as a political organization should establish itself in business in competition with individual enterprise, and that is just what they are proposing to do.

SCARCITY OF FUEL.

What is the result? The property is withdrawn from contribution to the expenses of the Government through the medium of taxation. The Government may own in the State of Wyoming one-fourth of the land and hold it under this Executive order from development, except just as the Government may choose to develop it; from development, except as the Government may be fortunate enough to induce somebody to lease this land, which it will not be able to do. Those lands lie nonproductive, noncompetitive, noncontributive, and the remaining property interests in the State will be taxed in proportion to the nonproductive element, because the fixed charges of maintaining the State government are not changed by reason of the fact that these lands are withdrawn. They remain the same and they must be met; and if they can not be met through the ordinary medium of taxation and contribution, then they must be met in a larger measure by the private interests that happened to be existing before this frost and blight of political spirit fell upon them; and that is the situation that is suggested to us by this message proposing to lease the coal lands.

For an indefinite period it is suggested to establish as the permanent policy of the Government that the Government shall no longer sell its timber lands, its coal lands, its oil lands, or its grazing lands, but that the Government of the United States shall set up in the business of grazing, in the business of lumbering, in the business of coal mining or oil mining, in competition with existing rights, and, of course, with the result that hereafter capital would not seek that field of investment. Who can compete in private enterprise with the Government of the United States? What individual or combination of individuals can go into the coal business and successfully compete with the United States Government? As I said in my remarks a few days since, our wood yards have gone out of business. Why? Because they could not compete with the Government of the United States in the wood market.

It was never contemplated, Mr. President, that the Government of the United States would engage in any productive industry whatever, except so far as might be necessary for its own immediate wants; and even then the broader and better policy of the Government has been at all times to purchase its supplies from those who produce in the field of individual enterprise.

Mr. President, I think I do not care to elaborate more upon the question of the leasing of these lands by the Government, except to emphasize the objection that it would render them noncontributive to the maintenance of the State governments. It will convert into a menace most legitimate and established business industries that come in competition with them, or else it would leave those lands lie idle and emphasize the monopoly that exists because of the present holding, and that at the expense of the people.

WELFARE OF THE PEOPLE.

Mr. President, it is suggested that this would be for the general welfare of the people. If we were a patriarchal government, the subjects of which were to be treated as children of a household, that might be true; but we are not. We are a household of equals in citizenship. Every citizen has attained his majority, and paternal influence does not control; but it is a government of equals. Therefore, we want no combination of officeholders, created by the people themselves to serve the purposes of the people, to, if I may use the expression, pat the people on the head and patronize them. Let the people through their legislative representative body, determine what is for their welfare; and when they have determined it, let no power on earth stay the hand of execution. To be told here in plain language that Congress is incompetent to protect the people in their rights or to determine what the rights of the people are, is a new doctrine, and one that the people will not take kindly to, though we may engage in long arguments and dissertations here as to Executive power, as to that unwritten power which has been claimed to exist, but which does not exist. There is no officer under this Government, or connected with it, that has any power, except that

which is specifically given and plainly expressed through the statutes or that great instrument that is the boundary line within which statutes may be made to exist.

Mr. President, I want to call attention to another proposition here on page 3 of this message. Congress is asked by a message from the President to appropriate $5,000,000 in the nature of a loan to the Forest Service. We are told that the income is not sufficient to maintain it, but that, in the judgment of the Executive, by the year 1910 the forests will have become sufficiently remunerative to pay the expenses of running them, and in the meantime we are asked to appropriate $5,000,000 as a loan to this Bureau of the Government. I do not believe for a moment that there is any danger of Congress doing anything of the kind, especially in view of the fact that the Forestry Service, at least in the statement which it has sent to Congress, shows that there is absolutely no necessity for any such appropriation. There was a balance to the credit of the special fund of forestry on the 12th day of April, 1906—which was the last report—of $273,363.33, an irresponsible fund you might call it, placed in the hands of a department or bureau of the Government, which expends it, not as the Constitution of the United States says expenditures shall be made—pursuant to an act of Congress—but which expends it upon its own determination as to the necessity or wisdom of making the expenditure. Nearly half a million dollars in the hands of a bureau, without any limitation or any classification as to the expenditure of that money, and then to ask us to give them $5,000,000, forsooth, on the security—I read the language:

> The need is urgent. Accordingly I recommend that the Secretary of the Treasury be authorized to advance to the Forest Service, upon the security of standing timber, an amount, say, $5,000,000, sufficient to provide a reasonable working capital for the national forests.

The Government is going to pawn its timber and borrow $5,000,000 on it. That is what it amounts to. The money in the Treasury belongs to the Government, and it does not have to put up security when it wants to use it for the purposes of government. It appropriates it out of the Treasury by an act defining the purpose. It does not say "We will put up a certain number of acres of forest land or we will put up certain Government bonds if you will allow us to use this money." It appropriates it. But we have here a proposition that, on the credit of the forests, we shall loan a Department $5,000,000. The forestry service, if it has any status at all, is a part of the Government. It is not like loaning a million dollars to the Jamestown Exposition or $5,000,000 to the Portland Exposition, which were private enterprises.

I am inclined to believe that some of these gentlemen have actually persuaded themselves that these great forests—this 121,000,000 acres—is their private estate. They are treating it as though it were some great baronial forest, at the head of which is the forester, separate and distinct from the Government, so much so that they are authorized, because of their assumed importance, to go to the Treasury of the United States and borrow money and pledge—what? Their private holdings in the land? No; but pledge the property of the United States Government as security for it. What for? What do they want to use it for? In addition to this sum of two hundred and seventy-odd thousand dollars, which they have in hand or had when they made the report, they propose to expend this $5,000,000 for making trails on forest reserves, fences, cabins for the ranger, bridges, telephone lines, and other items of equipment without which the reserve can not be handled to advantage. They want $5,000,000 worth of cabins and trails!

Mr. President, here is a circular that they have issued showing how much regard they have for the rights of the local governments. Under date of April 25, 1904, they issued this circular, which is in effect directed to the counties of the States. The counties exist by virtue of the provisions of the constitution of the State of Idaho. They are named and defined and delimited. They have certain rights under the law of the State of Idaho to make roads to open up the country in order that it may become productive and available for settlement. Years afterwards the Government, acting through its Forestry Service, goes in there, takes possession in the county in which I live of 80 per cent of the county and constitutes it a private forest reserve, in effect, upon which no man may set his foot against the wishes of a forester, upon which no man can remain an hour except with the consent of a forester, and they say to the county—which is as much a government as the General Government in its way and within the limits of its functions in regard to public highways—I read from the circular:

> In case of permit granted upon proper application filed by county commissioners or other duly authorized county officers for public wagon road right of way through forest-reserve lands, or for authority to occupy forest-reserve lands for public school purposes, or for other like public privilege, the formality of agreement and bond will not be required of them in the execution of their official duties in the case.
>
> Application, however, must be filed in every instance, setting forth, after the manner of the regular form prescribed in such cases, so far as it may be applicable, the facts and needs of the particular case, and stipulating full compliance with the forest-reserve rules and regulations.
>
> This application is to be forwarded by the forest officer, with his recommendation therein, to the Commissioner of the General Land Office, who may, in the exercise of his judgment, approve the same and permit the applicant to proceed without further formalities in the case.

Let us apply it. The county commissioners had expended a large sum of money upon a wagon road connecting what is known as the "South Fork" country with the St. Joe country. It was commenced before a forest reserve was even suggested. Settlement proceeded as a result of the roads and trails that opened up that new country. The Forestry Service, by proclamation, created a forest reserve that covers that wagon road. The expenditure had been made. The improvement of the country had followed, and yet it was all included within the forest reserve. What is the status now? The county's expenditure is rendered of no value to the county. The dominion and control incident to the public highway, built at the expense of the county, has passed from the county to the Forestry Service. When they want to extend that road, as they do at this very hour, from the present terminal to a new country that lies beyond the forest reserve, they can not do it unless they make the application and it meets with the approval of the Secretary of the Interior. They can not go out, as they formerly could, put a crew of workmen upon that road, and extend it according to the necessities of the hour; but they must allow the intervening weeks or months to elapse before their application can be submitted to the Interior Department, and, if it should be approved, that approval reach back to them. Mining camps spring up in that country, and the necessities are immediate for the opening up of roads and trails. They are not surrounded by conditions where you may take time, take a season or two, in which to provide roads and trails and other necessary approaches. You must do it at once; and yet, under these rules and regulations, a whole season would elapse before it might be done at all.

Mr. DEPEW. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from New York?

Mr. HEYBURN. Certainly.

Mr. DEPEW. Would the Senator be in favor of the local authorities having the right, without scrutiny from the General Government, to run roads as they please through forest reserves?

Mr. HEYBURN. Certainly. The State owns every sixteenth and thirty-sixth section of that land. It was granted to them for a purpose. It was granted to them in order that it might be made productive and contribute to the wealth of the State. How is it affected by having it included within a forest reserve and forbidding the State to open up their own lands? The land in a State is the inheritance of the people who go to the State, and not the people who sit back 3,000 miles away. Theoretically they are interested in it, but their interest only becomes operative and practical when they go where they may avail themselves of it. Until they do, they have no concern in it, except to see the laws governing it are fairly and honestly administered.

Mr. DEPEW. Then would not the Senator's theory, if carried into practice, destroy the whole system of forest reserves?

Mr. HEYBURN. I do not know whether it would or not, and I am not concerned about it. The system of forest reserves as now established and operated is so vicious that anything that would destroy it should be welcomed as a blessing to the whole people of the land.

Theoretically forest reserves would be all right. It sounds well to talk about protecting the forests. We are all in favor of it. No person is more so than those who make their homes in the vicinity where forests are. No one is more interested or as zealous in the protection of the forest than the State whose wealth depends upon conserving the natural resources that surround the State and lie within it.

The assumption that the men in the West are standing with drawn blades against these public utilities has no foundation whatever. The people in that country are the ones who are interested in preserving it. They are as good citizens, as virtuous, as zealous, as patriotic as those who live in the States of the East. Why should they all be suspected of wanting to destroy their own heritage? That is merely an idle fear on the part of men who have neither the desire, the interest, nor inclination to go to that country. But to the young men, the surplus population of the East, it is a land of promise and hope, and they do not go there for the purpose of destroying it.

They are its safest guardians; they are American citizens; they are American patriots, and the rights of the country can be as safely intrusted to them as it can to any person or any part of the people.

Mr. DEPEW. May I again interrupt the Senator?

The PRESIDING OFFICER (Mr. MCCUMBER in the chair). Does the Senator from Idaho yield to the Senator from New York?

Mr. HEYBURN. I yield to the Senator.

Mr. DEPEW. Is it not a fact that not the people of the Western States, but large companies, capitalized largely in the East, have denuded those States of the forests which are absolutely necessary for their agricultural maintenance and production?

Mr. HEYBURN. Mr. President, I have heard that suggestion, but there is no foundation for it in fact. The largest land grabber—and I use that term advisedly, and I might apply it to the men whose fortunes have resulted from land grabbing—is one of the vice-presidents of the National Forestry Association of the United States. He owns more land the title to which was illegally obtained than any other man or all other men in the United States, yet he is one of the vice-presidents of the National Forestry Association, the president of which is our worthy Secretary of Agriculture. I have the list of officers of that association. I had intended to use it, but I have concluded to curtail the Forestry Service part of this discussion; so I will not go into it further than to say that the people of that country are the ones who are opposed to these large holdings of land. I would limit them down to a very narrow space. I believe the forest should come to the consumer through the medium of the customs mill. That is where I would bring it in.

I read in the paper yesterday that the vice-president of the National Forestry Association, which has its headquarters in Washington City and of which the Secretary of Agriculture is president, and the Chief Forester is one of the executive committee, is going to build in the neighboring county to that in which I live the largest mill in the world, and they are starting about building it now, for the purpose of working up these vast areas of timber that they have wrongfully obtained in the State of Idaho.

Mr. PERKINS. May I ask my friend the Senator from Idaho if the distinguished vice-president who owns this great area of timber land is a resident of the State of Idaho?

Mr. HEYBURN. No. I think he is a resident of Wisconsin or Michigan; somewhere there.

Mr. DEPEW. Or California.

Mr. PERKINS. Not of California.

Mr. HEYBURN. Idaho has not risen to the dignity or the advanced civilization, I may call it, perhaps, which would induce those gentlemen of extreme wealth and habitual luxury to make their homes in it.

Mr. SMOOT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. HEYBURN. Certainly.

Mr. SMOOT. I should like to ask the Senator from Idaho whether these large holdings were not acquired by the vice-president spoken of before ever the forest reserves were established? And is it not impossible for him to-day to acquire such holdings where forest reserves have been established?

Mr. HEYBURN. No, Mr. President; they were not acquired before the forest reserves were created, but a number of them were acquired while we sat here in the vain supposition that we were heading off this land grabbing, and in another Department of the Government contracts were being rushed and hurried through in order that the ink might be blotted upon the signatures before we could vote upon the bill. At the proper time, when that matter is before the Senate, I will undertake to give details in reference to it, where it has been stated in a report that certain contracts had been made before we passed the act which shut out the exchange of lieu lands under the limitations of the act of 1906. I find by reference to an official circular which lies upon my desk that the date of the creation of the Santa Barbara Reserve is given as October 3, 1906, and yet I find a statement in the annual report of the Department which says that that contract had been made I think it was in the June preceding, and the forest reserves had not been created, according to their own circular, and yet they reserved the right to allow those lieu lands within that uncreated forest reserve to come within the exception of our statute, which was that it should not apply to existing contracts. But I will air that further on another occasion.

Mr. DEPEW. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from New York?

Mr. HEYBURN. Certainly.

Mr. DEPEW. It is only for a question, not for a speech. Is it not a fact, as the Senator has demonstrated, that the forest reserves have prevented the pernicious activity of other gentlemen as able and grasping as this vice-president in the direction of exhausting all the forests of the United States, and may we not give him credit, having got all he wanted himself and seeing the evils of it, of having become virtuous?

Mr. HEYBURN. That is somewhat on the theory of the man who, after he had gone into his neighbor's house and taken out all of the silver that was in it, should then step up to a policeman and say: "You had better keep your eye on that house; there are some burglars coming up the road and they may go there and take that man's property." That does not appeal to me.

The fact is that these forest reserves are made, if not entirely, in part, through the contrivance, direct and indirect, of these large monopolies which, having already obtained a monopoly in so large a measure, would like to shut up every other acre of forest land in order that there may be no more competition. As I said on a former occasion when I was speaking about this question, every time a large area of forest reserve is created lumber goes up in the open market from $2 to $5 a thousand; and why should it not? Suppose there are a hundred million acres of land available for a given purpose, and its value is based upon the productivity of the land; and suppose that one-half of the land is withdrawn from the field of production; would not the other half be worth as much as the whole was before one-half was withdrawn? Is not the remaining timber land that is owned by these people to-day worth just as much more as is represented by the proportion that that timber bore to the whole area? This is not a very elaborate proposition.

Now, I do not charge that any officer——

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Nevada?

Mr. HEYBURN. I do.

Mr. NEWLANDS. I will ask the Senator from Idaho whether, in case the laws providing for the forest reserves were repealed and they were all abandoned to-day, under existing law there would not be within the immediate future a concentration of these timber lands in the hands of great syndicates and monopolies such as he describes?

Mr. HEYBURN. There would not be, unless the officers of the Government were to shut their eyes and open the door so as to allow frauds to come in. I desire to answer that suggestion a little more fully.

Mr. NEWLANDS. I will ask the Senator whether he regards——

Mr. HEYBURN. I desire to answer that suggestion a little more fully than I have done.

Mr. NEWLANDS. I simply want to ask the Senator——

The VICE-PRESIDENT. Does the Senator from Idaho yield further to the Senator from Nevada?

Mr. HEYBURN. Yes.

Mr. NEWLANDS. I desire to ask the Senator whether he regards the present law relating to timber lands as adequate for the protection of the public, and whether he does not think it requires alteration and amendment?

Mr. HEYBURN. The timber laws? Yes; I would suggest that they be amended. The law as it exists now is not a perfect one. It can, however, be improved. This is what is required at present under the "stone and timber act," as it is called. It in terms protects the Government if it is enforced, and no law will protect the Government that is not enforced. It allows a man to take not to exceed 160 acres. He must be a qualified locater under the law. He must be a citizen of the United States or must have declared his intention to become such.

The land must be valuable chiefly for its timber. It must be unfit for cultivation. Is there any difficulty about determining that question? Are we to be told that the Executive Department of this Government is not competent to enforce the law which would prevent a man from taking agricultural land as timber land, when the law says on its face that the land must be unfit for cultivation? Then, again, it must be nonmineral.

Mr. NEWLANDS. Mr. President——

Mr. HEYBURN. Will the Senator from Nevada pardon me for a moment? I want to conclude the conditions.

The land must be nonmineral. Should there be any difficulty in enforcing that provision of the law? That is a question of fact. If it is mineral land, it can not be taken up under the stone and timber act. If it is fit for cultivation, it can not be taken up under the stone and timber act. It must be neither school sections nor State lands. If it is taken up, it is taken

up subject to rights of way for ditches, etc., under the act of 1896. Why should there be any difficulty in enforcing a law like that?

The Senator asked me, in effect, whether, if the forest reserves were thrown open, there would not be a rush for those lands. Those lands have been there during all the centuries that have passed over us. The trees have not been burned up. They have not been destroyed. They have not been stolen. No man ever cuts a tree except for some useful purpose and to the extent that it may be necessary. The Government has exchanged trees for men, forests for civilization. This is the policy which it should continue to pursue. I do not care if people go in there at the rate of a million a year and take possession of those forests. If they substitute their homes and their improvements for the solitude of those forests, the State and the nation are the beneficiaries.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield further to the Senator from Nevada?

Mr. HEYBURN. Certainly.

Mr. NEWLANDS. I understand the Senator from Idaho to contend that there is no difficulty at all about ascertaining what lands are subject to timber entry; that they must be lands that can not be cultivated; that they must be timber lands; that they must be nonmineral lands. I assume, therefore, that the Senator must admit that these facts must be ascertained by a personal inspection of the ground, and yet the Senator is aware that in the Senate Chamber a proposition for an appropriation for agents for that purpose is being vigorously opposed. I do not know whether it is being opposed by the Senator himself, but it certainly is being opposed on this floor. Now, if the Government has not a sufficient number of men, expert and experienced, to make these examinations on the ground, how in the world is it to prevent lands which are not subject to timber entry from being taken up as timber lands, and how is it to prevent these evasions of the law, which we know have taken place in the past and which have resulted in the concentration of large areas of land in single ownership, against the policy of Congress?

Mr. HEYBURN. I do not believe it should be necessary to argue that from the beginning of civilized government facts have been established through the medium of sworn testimony, and it has not been deemed necessary heretofore that every fact should be established only by inspection.

Now, the suggestion of the Senator is that unless you inspect the claim on the ground you can not determine its character. The law of Congress requires two witnesses, who have inspected it, to appear before the tribunal appointed by law for that purpose and testify under oath. Was the Senator here, I wonder, when the percentage of cancellation was stated a few days ago? Less than 1 per cent of all the applications for timber lands have been found fraudulent or mistaken, and a large proportion of that 1 per cent were canceled not for fraud, but for mistakes—mistakes in complying with the rules and technicalities. With so small a percentage of fraud, if we admit it all to be fraud, is it wisdom to close up the entire area of the country to create that solitude? Of course nothing but crime and murder can occur in those solitudes. No useful act that will contribute to the prosperity and happiness of human kind is apt to occur in those solitudes.

The county that lies south of the county in which I live expended $8,000 last year in trying men who had committed murder in forest reserves, which contribute nothing to the expense of maintaining the courts of the government that had to try them.

It is said that the reserves are there for the purpose of furnishing lumber. Let me give the Senator some idea of the extent to which they contribute in that way. I have it here in this report. This vast area of 121,000,000 acres of forest land for the first nine months of the last fiscal year produced the magnificent sum of $257,000 for all purposes. The Desert of Sahara will produce a larger income than that. Take the people's land and withdraw it from production under the pretense of protecting it from the people who themselves own it. It is the people who own these forests, and they want to use them for their own legitimate purposes, and yet under this system of Executive orders, made with the permission of Congress, they have been withdrawn from the people as though the people were a common enemy, and they have been turned over to a bureau that has treated them as though they were a private estate.

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from North Dakota?

Mr. HEYBURN. Certainly.

Mr. McCUMBER. I have listened with a great deal of pleasure to the Senator's explanation of the rights of the people, and I agree with him in what he has stated in the main. But I want the Senator, if he will, before he gets through to give us a remedy for the evil of which he complains. In speaking of the very point that the Senator his discussed, that the people should have those timber lands, I desire to call the Senator's attention to the fact that the people had timber lands in the Appalachian chain, and now the same people are asking the Government to appropriate many millions of dollars to reforest the land. I simply call the Senator's attention to that fact, not for the purpose of criticising in the least degree his position, but that he may explain, in view of the fact that there are two sides to the question, where we should draw the line. We do not want all the country deforested. We want some forests to protect us against floods and to hold the waters for irrigation purposes and for other proper purposes. I should like to have the Senator explain where we should draw the line.

Mr. HEYBURN. I will briefly suggest to the Senator what seems to me to be at least in a measure a solution of the problem. In the first place, the Appalachian range was originally covered with an entirely different class of timber and it is of a different soil. The forest was taken not for the purpose of building up that country, but for the purpose of building up some other country. In the forests of Idaho—I take Idaho merely as an instance, because it serves the purpose—the people want the timber to build up Idaho. They want to take the timber for their own home purposes, and in order that it may be available for that purpose they want the people to have the right to be upon the soil, and the remedy lies in surveying that land and saying to the people there and elsewhere, "Here you can have a homestead, well timbered, well watered, and," in the language of the old advertisements, "convenient to places of public worship." That is what they want.

Mr. SMOOT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. HEYBURN. I should like to develop the answer to the Senator from North Dakota, but I will yield to the Senator from Utah.

Mr. SMOOT. The Senator referred to all the vast areas that have been withdrawn by the Bureau of Forestry, and recited the fact that last year only two hundred and fifty-odd thousand dollars had been collected from the sale of timber. I should like to ask the Senator if he knows of a single case where a person or a company has made application to the Bureau of Forestry for a permit to cut timber within a forest reserve and it was denied?

Mr. HEYBURN. No; I do not know anything about the details of it, nor is it material to be considered. They must have granted some, because I have here their official statement, and it is not material that they should have denied applications. I do know this, that the conditions are such that only people situated in a peculiar way can take advantage of it. I do know that they advertised for sale—I think it was 16,000,000 feet—in the neighborhood of Boise City last fall, and I do know that the stool-pigeon of a lumber company bought it and turned it over to the big lumber syndicate. I know that is the way it works.

Mr. SMOOT. Mr. President——

Mr. HEYBURN. If the Senator will permit me, I desire to speak a little further along the line suggested by the Senator from North Dakota, because that is a very pertinent inquiry. I am not one of those who believe in tearing down something unless you are able to replace it with something equally as good or better.

Mr. SMOOT. That is very proper. I want to call the attention of the Senator to the fact that, so far as my State is concerned and so far as my experience goes, no person or persons ever made application for timber upon a reserve but that he or they have been granted the right of cutting, whether they were small concerns or large concerns.

Mr. HEYBURN. In the State of the Senator from Utah, according to this annual report, the timber sales amounted to $8,265.13. I know of little country lumber yards in our country that do more business than that in a year, or they did when they could get the lumber. There was received from grazing within forest reserves in Utah from July 1, 1905, to March 31, 1906, $3,402.91. I read from the official report published by the Department.

Mr. McCUMBER. Let me ask the Senator right here if one of the troubles is not due to the fact that we have reserved about five times as much land that is not timber land as we have land that is actually good forest land?

Mr. HEYBURN. Yes. They have reserved in the State of Idaho 2 acres of nontimber land for every acre of forest land

reserved; and they confess it. They are creating new reserves all the time for the avowed purpose of making pastures, and then they are granting special privileges upon those pasture lands to the exclusion of others having an equal right as citizens to participate in the enjoyment of the public lands. They are granting special privileges, and I have in my mind an instance, as I have the letter in my files, of a man who recently bought 6,000 sheep in Washington County, assuming of course that he could get land on which to graze his sheep. When he went to the Forester to get land on which to graze his sheep, he was told that the lands had all been apportioned under the special-privilege rules. He wrote me, saying, "I have the sheep, but I do not know what to do with them."

Mr. SMOOT. I should like to ask the Senator if he knows whether those sheep had grazed before that in Idaho or in some other State?

Mr. HEYBURN. That is going too much into details. It is just that kind of details that is driving those people out there frantic and driving them across the line into Canada, as the Senator from Montana [Mr. CARTER] said the other day. It is just such little petty annoyances. A man ordinarily should have the right to graze upon the public domain. I believe in free pasturage on the public domain. It belongs as much to one person as to another, and it is not within the spirit of the laws of this country that special privileges should be granted to any man, carved out of that which belongs to all, a part excluded and a part permitted to enter. The Government is not in the grazing business, or it should not be, or in the lumber business, or in the coal business.

Mr. SMOOT. All that I can say about it is that, so far as our State is concerned, if there was no regulation of grazing privileges there it would not be very many years until there would be no grazing land at all; it would be completely eaten up. No stock, either sheep or cattle, could live in our State if there had not been some kind of regulation upon the use of grazing land.

Mr. HEYBURN. Let Congress, then, make a regulation. If there are grazing lands and they should be used for that purpose, let us not pretend to make a forest reserve and at the same time make it for the purpose of grazing.

Mr. SMOOT. That is true.

Mr. HEYBURN. I have gone enough into details. Other Senators perhaps will develop these facts in the further discussion of the question. I desire now simply to call attention to the purpose I had in entering upon this discussion. I have been asked for the remedy against the fraud of which this message complains. The remedy lies apparently in taking jurisdiction from the Department of the Interior and placing it where it should originally have been placed under the Constitution. For that purpose I have introduced the land-courts bill, which would establish a complete system for the determination of every question of right, whether it be between the Government and the individual or between individuals. The land courts would be established for that purpose, would have jurisdiction of no other subject, and would be unembarrassed by any other condition. The expense of it would be so infinitely less than that now incurred in administering the law in this unequipped and confessedly incompetent tribunal that there is no room for hesitation in making the change.

EXPENSE OF LAND COURTS.

Here are some figures: I said the other day that these land courts in the aggregate would not cost to exceed $135,000 a year. That includes all of the judges and the appellate courts and the clerks—$135,000 a year. The special agents alone now in the Interior Department, before we have complied with the earnest request that is made for additional ones, cost $95,100 a year. I have the figures here of the Department—$95,100 for the little handful of special agents who are now at work—and the Department wants enough to examine every claim upon the ground before the title passes. There are now 53,000 entries suspended. Twelve months from now there will be 153,000 of them, and we could not get the special agents into the field, if we were to try, inside of twelve months. At that time there would be 153,000 claims to be examined on the ground. It would take 5,000 special agents to do it. Then those special agents' reports come in here, and it will take another several thousand men to examine the reports of the special agents and read them and harmonize and determine whether or not on the reports of the special agents the Government shall pass title. That will be the situation, and the special agents required to do this work would cost more than $3,000,000 a year.

By substituting these land courts at the expense of $135,000, which would try these controversies as other controversies are tried, you get rid of the difficulty of which you now complain, and when this court renders a judgment, the bill which I have introduced and which I shall ask upon the conclusion of my remarks to be referred to the Committee on the Judiciary provides that the decree or final judgment of the land court shall be binding upon the executive branch of the Government and that the patent shall issue upon the filing of that judgment or decree.

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from North Dakota?

Mr. HEYBURN. Certainly.

Mr. McCUMBER. Let me ask the Senator why the register and receiver could not be the land court the same as they are now, and then all the proofs, instead of being made in other sections, could be made before the register and receiver, and that decision could be made conclusive, subject only to the right of appeal?

Mr. HEYBURN. I should like to answer that right from the record here. Of course they might be, but the President's message of January 25—I have it not before me—provides that the judgment of those officers shall not be taken into consideration; that unless the testimony before the register and receiver was taken in the presence of an examiner the judgment of the register and receiver shall not be taken as to authorize the issuance of patent. That is plainly stated in the message of January 25. So those officers have been ignored and set aside.

Mr. McCUMBER. If the Senator will allow me, I understand the method is almost universal in cases of this kind to take testimony not before the land office, but to take it before some court commissioner or other officer. It is so at least in my State. The testimony is taken at such a time that the examiner can be present, and after it is taken the case passes upon his approval. If it is not taken at such a time as he can be present, it is held in the local land office until the examiner has visited the land in question.

I do not know whether that is the system in vogue in Idaho and farther west in the mountainous sections or not; but if we are going to have a court and bring every case before the court, why not utilize the officers we now have and have a double court, one a check upon the other, and have the benefit of the judgment of both the receiver and the register and have the special examining agent present at all the hearings?

Mr. HEYBURN. Mr. President, in uncontested cases the register and receiver now pass them and they go forward for final patent. The examination before the commissioner to which the Senator refers is taken in case of final proofs, not in case of original entries. It must be made in the land office. The qualifications of the applicant must be determined in the land office. Under the provisions of law the final proofs may be taken before a commissioner, and he sends his report in writing to the land office. Where there is a contest the contest may be carried on in the land office. The testimony, as a matter of fact, is taken in a little room connected with the land office, lasting sometimes throughout weeks, and it is written down there. Generally it is written manually. Where they have no allowance for clerk hire or for stenographers it has to be written down in longhand. That is the practice. That practice would not be disturbed. It is only in contested cases that the land courts would act.

I will put into the RECORD at this time a statement which I have here showing that the appeals are large in number. It is a statement made from 1881 to 1905 of cases appealed to the Secretary of the Interior, in which decisions have been written and are recorded in the books. The total number is 14,281.

The matter referred to is as follows:

*Cases appealed to the Secretary of the Interior and decisions reported July 1, 1881, to June 30, 1906.*

| | |
|---|---|
| 1. July, 1881, to June, 1883 | 461 |
| 2. July, 1883, to June, 1884 | 754 |
| 3. July, 1884, to June, 1885 | 522 |
| 4. July, 1885, to June, 1886 | 476 |
| 5. July, 1886, to June, 1887 | 456 |
| 6. July, 1887, to June, 1888 | 568 |
| 7. July, 1888, to December, 1888 | 439 |
| 8. January, 1889, to June, 1889 | 393 |
| 9. July, 1889, to December, 1889 | 432 |
| 10. January, 1890, to June, 1890 | 504 |
| 11. July, 1890, to December, 1890 | 461 |
| 12. January, 1891, to June, 1891 | 464 |
| 13. July, 1891, to December, 1891 | 477 |
| 14. January, 1892, to June, 1892 | 465 |
| 15. July, 1892, to December, 1892 | 414 |
| 16. January, 1893, to June, 1893 | 414 |
| 17. July, 1893, to December, 1893 | 400 |
| 18. January, 1894, to June, 1894 | 425 |
| 19. July, 1894, to December, 1894 | 437 |
| 20. January, 1895, to June, 1895 | 450 |
| 21. July, 1895, to December, 1895 | 400 |
| 22. January, 1896, to June, 1896 | 560 |
| 23. July, 1896, to December, 1896 | 395 |
| 24. January, 1897, to June, 1897 | 362 |
| 25. July, 1897, to December, 1897 | 329 |

| | |
|---|---|
| 26. January, 1898, to June, 1898 | 396 |
| 27. July, 1898, to December, 1898 | 372 |
| 28. January, 1899, to June, 1899 | 328 |
| 29. July, 1899, to April, 1900 | 431 |
| 30. May, 1900, to June, 1901 | 275 |
| 31. July, 1901, to December, 1902 | 176 |
| 32. January, 1903, to May, 1904 | 249 |
| 33. June, 1904, to June, 1905 | 298 |
| 34. July, 1905, to June, 1906 | 298 |
| Total | 14,281 |
| Opinions of Attorney-General: | |
| May, 1900, to June, 1901 | 16 |
| July, 1901, to December, 1902 | 10 |
| January, 1903, to May, 1904 | 14 |
| June, 1904, to June, 1905 | 10 |
| July, 1905, to June, 1906 | 25 |
| | 75 |

Mr. HEYBURN. From an actual examination of the records in the land office the legal officer there will have to decide from six to ten cases per day, some of them involving small interests and some of them large interests. No man can decide so many cases in a day, examining the records as he must, and arrive at a conclusion that will be universally fair or reasonably fair to all the parties concerned. It can not be done.

In the Department of the Interior, to which appeals lie from the Commissioner of the General Land Office, the number of cases is even much larger—mining cases and land cases. Those contests are tied up there waiting for the report of the special examiners. There are some 4,700 of them, if I remember the figures aright. They are now accumulating every day.

The purpose of creating these courts is to determine the contested cases and to make a forum in which contests can be presented. The uncontested cases would go right along as at present. The officers of the land offices of the United States, as a rule, are not attorneys. If they are, they are not attorneys of a grade that would be selected to determine very large interests, because the salary is small.

I do not intend to prolong this discussion to any greater length, except that I will also insert at this point a statement showing the number of mining contests appealed from the United States land offices to the Commissioner of the General Land Office in ten years and the number of appeals from the Commissioner of the General Land Office to the Secretary.

The matter referred to is as follows:

[Memorandum.]

*Statement showing the number of mining contests appealed from United States land offices to the Commissioner of the General Land Office, the number decided by the General Land Office, and the number appealed from the General Land Office to the Secretary of the Interior from the year 1896 to 1906.*

| Year. | Number of mineral contests appealed from local office. | Number of mineral contests appealed to Secretary. | Number of mineral contests decided. |
|---|---|---|---|
| 1896 | 125 | 108 | 201 |
| 1897 | 316 | 121 | 375 |
| 1898 | 149 | 116 | 294 |
| 1899 | 214 | 134 | 320 |
| 1900 | 248 | 146 | 280 |
| 1901 | 180 | 224 | 339 |
| 1902 | 206 | 155 | 316 |
| 1903 | 248 | 109 | 213 |
| 1904 | 283 | 149 | 311 |
| 1905 | 260 | 141 | 186 |
| 1906 | 242 | 149 | 197 |
| Total | 2,471 | 1,552 | 3,032 |

Mr. HEYBURN. I desire to have inserted in the RECORD a certified photographic copy of a map of Idaho showing the lands that have been withdrawn from settlement. In this map the dark areas represent the forest reserves that have been withdrawn. I have a map with the figures on it which I will offer to be printed in the RECORD, with the consent of the Senate. The dark areas represent the forest reserves, amounting to something over 18,000,000 acres.

Mr. DEPEW. What percentage is that of the total lands of the State?

Mr. HEYBURN. Forty-two and a half is, I think, the per cent. I have a map giving it officially. I thought I had it here.

Mr. McCUMBER. I understand the Senator to say that about 42 per cent of the lands of the State are in forest reserves.

Mr. HEYBURN. I will give it exactly.

Mr. McCUMBER. I should like to know what percentage of that 42 per cent is in actual forest and what portions are prairie land, and what portions are what we call, generally, scrub land, with no trees that could be said to be forest trees?

Mr. HEYBURN. Of the 18,000,000 acres included within forest reserves the merchantable forest lands do not exceed 8,000,000 acres. The system of pasturing forest reserves is so inconsistent with the theory of forestry, which contemplates allowing the younger growth to come along and succeed that which is necessarily removed, as to present an absurdity upon its face. They are pasturing on the forest reserves something like three or four million sheep, cattle, and stock of various kinds that eat up all the new growth as fast as it appears above the surface and nibble off all the little branches and young trees that might make other forests or renew the forests in years to come. The fact is that the forestry system is a great system for the purpose of gathering this land together and letting it out for pasturage to those who are so fortunate as to get it and excluding from it those who are not so fortunate as to get it.

The State of Idaho constructed a wagon road, intended to connect the two ends of that State, at an expense of something over $300,000. They completed it, I think, before 1895, before there was a forest reserve created, except the Bitter Root Reserve, which is the one reserve in the center of the State which is not small, but comparatively small. Along came the forest reservers and placed forest reserves over portions of that road that cost more than $175,000 and took possession of it, and the State itself is there now on its own road only by the grace of the forest reservers. That road was intended to allow the immigrants landing in the east end of the State intersected by railroads to pass easily into the interior and settle and take advantage of the opportunities to make homes there. Yet they can go there now over that State wagon road only by the grace of the Forester and subject to the rules and regulations of the Forestry Service.

Mr. President, I have not covered all the questions I wanted to in connection with the message of the President. It is a very large question. It involves a multitude of interesting questions that ought to be discussed and understood before we can act intelligently.

I now ask that Table Calendar No. 19 be referred to the Committee on the Judiciary.

The VICE-PRESIDENT. Does the Senator from Idaho ask that the pending resolution be referred to the Committee on the Judiciary?

Mr. HEYBURN. No; the Table Calendar bill, the bill (S. 6647) to establish district land courts of the United States and an appellate land court of the United States.

The VICE-PRESIDENT. Without objection, it is so ordered.

Mr. SMOOT. I think the attention of the Senator from Nevada [Mr. NEWLANDS] should be called to the order, because I understood that he desired to speak upon the resolution.

Mr. HEYBURN. I am not sending the resolution to the committee, but the land-court bill. The question can be discussed under the resolution. I should like the Judiciary Committee to have the bill so that it may consider it, if it should desire to do so.

Mr. NEWLANDS. I understand that the resolution is still pending.

Mr. HEYBURN. The resolution is pending. It is on the table.

Mr. SMOOT. The pending resolution has not been referred.

Mr. NEWLANDS. I desire to say a few words on the resolution.

Mr. HEYBURN. I should like in my own time to submit a memorandum of the number of cases decided and appealed between certain dates. I desire to have it printed in the RECORD in connection with my remarks.

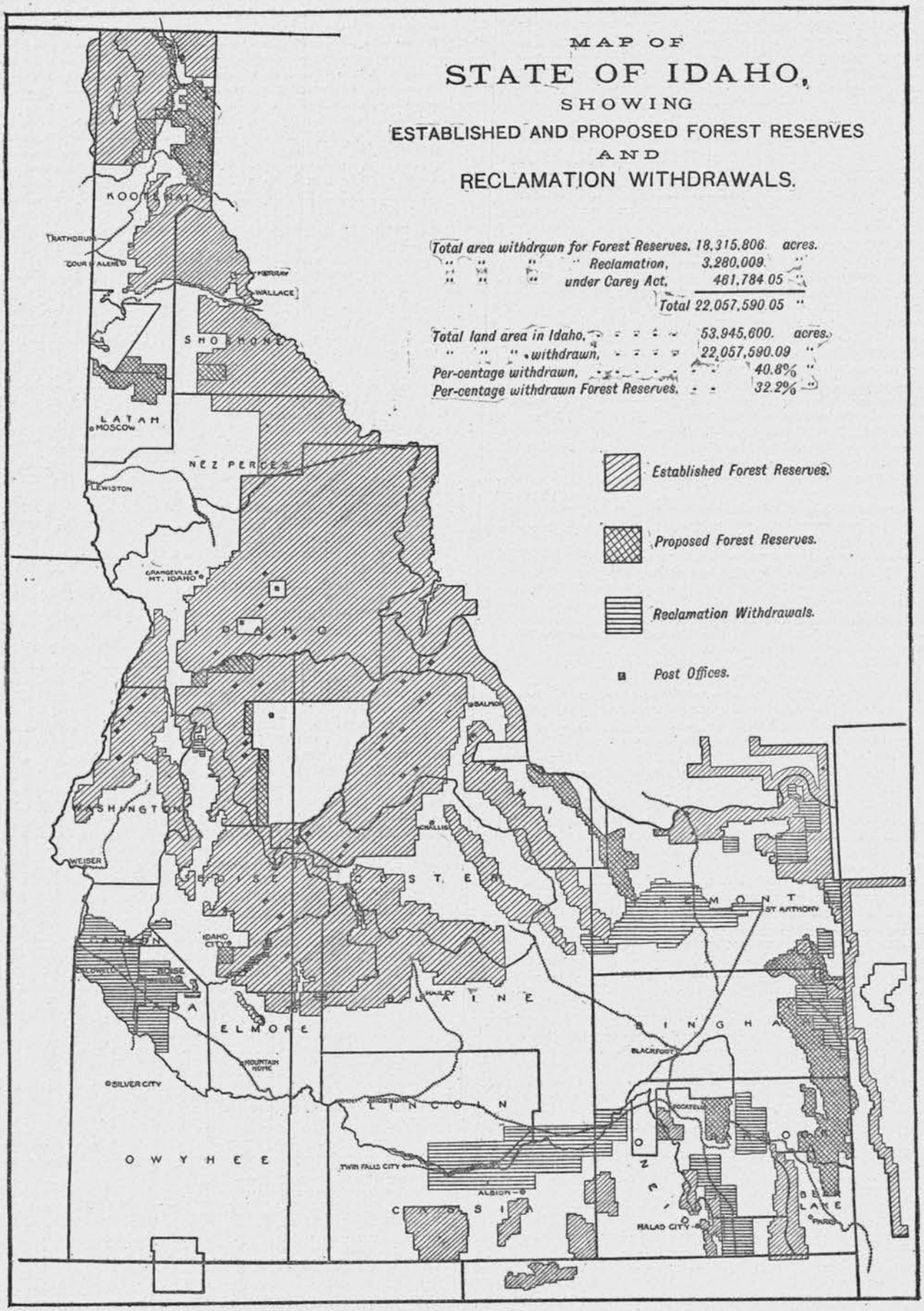
The VICE-PRESIDENT. Without objection, it will be printed.

The matter referred to is as follows:

[Memorandum.]

The following shows the number of appealed contest cases received in Division H for the twelve months ending June 30 of the years named below, together with the number decided and the number of appeals to the Secretary of the Interior filed:

| Year. | Received. | Decided. | Appealed. |
|---|---|---|---|
| 1897 | 680 | 730 | 579 |
| 1898 | 374 | 407 | 431 |
| 1899 | 420 | 334 | 264 |
| 1900 | 444 | 247 | 218 |
| 1901 | 436 | 566 | 397 |
| 1902 | 643 | 441 | 317 |
| 1903 | 924 | 408 | 361 |
| 1904 | 1,128 | 1,234 | 696 |
| 1905 | 966 | 1,424 | 822 |
| 1906 | 1,195 | 1,260 | 794 |
| Total | 7,210 | 7,051 | 4,879 |


MAP OF
STATE OF IDAHO,
SHOWING
ESTABLISHED AND PROPOSED FOREST RESERVES
AND
RECLAMATION WITHDRAWALS.
Total area withdrawn for Forest Reserves, 18,315,806 acres.
" " " " Reclamation, 3,280,009 "
" " " under Carey Act, 461,784.05 "
Total 22,057,590.05 "
Total land area in Idaho, 53,945,600. acres.
" " " withdrawn, 22,057,590.09 "
Per-centage withdrawn, 40.8% "
Per-centage withdrawn Forest Reserves, 32.2% "
Established Forest Reserves.
Proposed Forest Reserves.
Reclamation Withdrawals.
Post Offices.
KOOTENAI
SHOSHONE
LATAH
MOSCOW
NEZ PERCES
LEWISTON
ORANGEVILLE
MT. IDAHO
IDAHO
SALMON
WASHINGTON
WEISER
CUSTER
LEMHI
IDAHO CITY
BOISE
ELMORE
MOUNTAIN HOME
SILVER CITY
OWYHEE
BLAINE
HAILEY
LINCOLN
TWIN FALLS CITY
ALBION
CASSIA
FREMONT
ST ANTHONY
BINGHAM
BLACKFOOT
BANNOCK
POCATELLO
ONEIDA
BEAR LAKE
PARIS
MALAD CITY

Mr. CLAPP obtained the floor.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Nevada?

Mr. CLAPP. That depends upon the nature of the request. I expected to move the consideration of the Indian appropriation bill. Does the Senator wish to take any time?

Mr. NEWLANDS. I will state to the Senator from Minnesota that I wish to address the Senate on the pending resolution, which constitutes the unfinished business of the Senate.

Mr. CLAPP. I think in view of the state of the public business we ought to hasten along with the appropriation bills.

Mr. NEWLANDS. I wish to address the Senate at some length, probably half an hour, and I might take up more time if there are interruptions.

Mr. CLAPP. I hardly know what to say. I feel that we ought to proceed with the appropriation bill. At the same time I do not want to interfere with anyone. I should like to have an understanding as to how long it would take, for the benefit of those Senators who are waiting for the appropriation bill to come up.

Mr. NEWLANDS. I ask the Senator whether he would be able to finish the consideration of the bill this afternoon.

Mr. CLAPP. I was in hopes this afternoon to complete the unobjected portion of the bill, and also to complete the amendments that have been suggested by the Department and which were printed Saturday night. That would bring us down to those items which would be contested and we would be ready then to-morrow to proceed with them. I think in probably an hour or an hour and a half's time we could do what I had in mind for to-day.

Mr. McCUMBER. I should like to ask the Senator in charge of the appropriation bill if the reading of the bill has been completed at the desk?

Mr. CLAPP. No, sir; only about 80 pages.

Mr. McCUMBER. It would probably take the rest of the afternoon to complete the reading and do what the Senator has suggested.

Mr. CLAPP. I think in an hour and a half we may complete the reading and complete the Department amendments, which I will suggest as we go along with the reading.

Mr. NEWLANDS. I will ask permission, then, to go on immediately after the routine business to-morrow morning.

Mr. CLAPP. I think it would perhaps better conserve the business of the Senate if the Senator went on this afternoon. Then we can take up the appropriation bill either after the Senator gets through to-night or to-morrow morning, and not be interrupted. If it is agreeable to the Senator from Nevada he can go on now, and at the conclusion of his remarks I will move to take up the bill.

Mr. HALE. Before the Senator from Nevada goes on—I was called out of the Chamber on appropriation bills—I want to ask a question of the Senator from Idaho [Mr. HEYBURN], who has, I may say, interested us all by his forceful presentation of this case. The Secretary of the Interior has been very sharply censured all through this debate. My impression about that official is that he is a capable and honest public servant, and that whatever mistakes he may have made do not in any way touch his integrity or his capacity as an administrator.

But over and above the jurisdiction that he exercises is the control of all these matters by the President of the United States. I wish to ask the Senator whether in these troubles, and in this serious mischief which has come to his constituents and to the people of other States, as these have arisen they have been laid before the President of the United States, and what action, if any has been taken. Of course I know about the message, and all that; but has appeal been made, as troubles have arisen, from the Secretary to the President?

Mr. HEYBURN. I will say first that not a word that I have uttered was intended to imply that the Secretary of the Interior or the President of the United States were or could be guilty of purposely doing a wrong act or perpetrating an injustice, but that they were misinformed or uninformed as to the facts, and that, because of being misinformed or uninformed, they have been led into doing those things which have resulted as I have suggested. But I have not attacked or intended to attack their honor as men or as officials.

Mr. HALE. I do not understand that the Senator has. He is very careful about those things. My point was whether when these troubles and grievances have arisen the Senator and those associated with him in remedying the grievances have laid the case before the President of the United States, and whether the policy which the Senator gravely believes is unfortunate and mischievous has been approved not only by the Secretary but by the President.

Mr. HEYBURN. Yes; upon an insufficient understanding. But I will say to the Senator that there is published at the expense of the Government a pamphlet which is quite extensive and which contains the correspondence between the President and myself in regard to a large portion of the matters that have been under consideration. In that I set forth as clearly and as fully as I could the evils that were being worked upon our people by the creation of these forest reserves. But as to the matters contained in the President's message, which I have been particularly discussing on this occasion, of course, many of them have only arisen within a few days.

I could not know, and I did not know until that message came to the Senate, that the President contemplated suspending these entries or withdrawing these lands. I have not been asked to confer about it. He having in a public message to the Senate stated these things, I could not appropriately go before him and discuss them, except I was invited to do so, as it would seem like a voluntary criticism of an act already performed by him. The first intimation I had, and, I think the first intimation any member of this body had, that the President was going to suspend the entries which had been made by the homesteaders and the mining claimants and the coal claimants and desert entrymen was when that message came here.

So far as I was concerned personally, I must say I never was more surprised at a position taken upon a public question than I was when I read that message advising us, not that these things would be done, but that they had been done; so any question involved in that message has not been discussed with the President, but the questions in regard to the forest reserves have been discussed fully, and there is a document which was before the Senate, and which probably may be found among the Senate documents, in connection with this matter, that sets forth the correspondence between the President and myself. It is accompanied by maps and with the most careful, painstaking showing that could be made in the matter.

Mr. HALE. What I was uncertain about was whether the Senator and those joining with him in a common object, before bringing the matter here, had exhausted every remedy in the executive department of the Government, including the President?

Mr. HEYBURN. I think I may safely say that, as far as my connection with it goes, I have exhausted every possible argument that I could present.

Mr. McCUMBER. While the Senator is on his feet, with the permission of the Senator from Maine, I should like to ask the Senator from Idaho who initiates each new scheme of a separate timber reservation or any of these reservations. Do they come from the President upon the advice of the Secretary of the Interior, or does the Secretary act upon the advice of the President? I judge from the remarks that were made the other day by the Senator from Montana [Mr. CARTER] that the President acted upon what he designated as the "information or misinformation" of the Secretary of the Interior, and now it seems that the Secretary of the Interior acts upon the suggestion of the President. I do not know who looks this matter up. I suppose it is initiated with the Forest Service, the commission or Bureau, and they present the matter both to the President and to the Secretary of the Interior, but mainly they make their reports to the President and the Secretary of the Interior simply carries out the order of the President, which is made upon the recommendation of the Bureau of Forestry. If I am in error, I should like to be corrected on that point.

Mr. HEYBURN. I think I can state the facts accurately. There is a certificate (I have it on my desk, but am unable at this moment to put my hands on it) in which the Chief Forester, or the Secretary, I am not sure which, but at least the head of a department, requests the foresters in charge in the field to suggest any suitable land which comes under their observation that should be converted into forest reserves. So I assume from the circulars and the correspondence, copies of which I have, that probably all of the recent forest reserves have been created at the suggestion of the foresters in the field. They see a domain spread out before them that they think they would like to have under their jurisdiction, and they write describing it, the Chief Forester puts his initials upon it, and it goes to the Secretary, and he assumes that these men in the field have acted wisely in recommending it.

Mr. McCUMBER. Right there I should like to ask whether it goes to the Secretary or to the President.

Mr. HEYBURN. I can give more definite information. I have the circular before me. It is as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
*Washington, September 21, 1905.*

Forest Reserve Order No. 10. Reserve boundaries.

*To forest officers in charge:*

Report by November 15 what areas, if any, contiguous to your reserve are suitable for reserve purposes. These areas will be fully examined and reported upon by the section of reserve boundaries during the next field season. Suggest also, for similar study, any other areas of which you have knowledge. Your report should locate by legal subdivisions, if possible, the lands recommended, and should briefly describe the character of the country.

OVERTON W. PRICE,
*Acting Forester.*

So, of course, he is acting for Mr. Pinchot, the Chief Forester. That issues from the Office of the Forest-Reserve Service, which is now a part of the Department of Agriculture.

Mr. McCUMBER. What I want to get at is whether that goes to the President or whether it is made to the Secretary of the Interior?

Mr. HEYBURN. It is made to the Chief Forester, and by the Chief Forester to the President.

Mr. McCUMBER. Then the President is the officer who directs the reservation?

Mr. HEYBURN. The Secretary of the Interior merely carries out the suggestions of the President. That is correct.

Now, in connection with this matter, at this time I ask to have inserted in the RECORD a document which I send to the desk, which is a consideration of the question as between the reserves and the school lands.

The VICE-PRESIDENT. In the absence of objection, permission is granted.

The document referred to is as follows:

The State's title to its lands. Open letter from Senator HEYBURN to the Idaho Daily Statesman, in reply to editorial of February 6, 1906, in regard to forest reserves in Idaho.

UNITED STATES SENATE,
*Washington, D. C., February 14, 1906.*

IDAHO DAILY STATESMAN, *Boise, Idaho.*

GENTLEMEN: My attention is directed to an editorial in your issue under date of February 6, 1906, under the heading of "HEYBURN'S speech."

This editorial evidently being intended as a review of my recent speech in the Senate on the forest-reserve question, I feel it my duty to direct your attention to some manifest misconceptions or errors on your part in dealing with this subject.

It would hardly seem fair to attribute your failure to comprehend the real points at issue in the forestry controversy to ignorance or inability on your part to understand and comprehend the scope of the legal questions presented in my speech affecting the title of the State to the sections 16 and 36 granted by Congress to the State of Idaho for public school purposes by the admission act of Idaho into the Union. I am therefore compelled to assume that in maintaining the position assumed by you upon these questions you would waive the legal rights of the State to these lands, and that in discussing the question you would disregard such rights rather than confess to the manifest error into which you have been led by overzeal in espousing the cause of the Forester upon sentimental grounds, actuated to some extent by your antagonistic personal feelings toward myself. That there may hereafter be no mistake as to the question involved, as to its fair presentation to you, I take this occasion of crystallizing the legal questions involved, stripped of all sentiment.

THE STATE'S TITLE TO ITS LANDS.

The State's title to sections 16 and 36 is based upon section 4 of the act of Congress approved July 3, 1890, providing for the admission of Idaho into the Union.

This section reads as follows:

"That sections Nos. 16 and 36 in every township of said State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior."

Section 5 of the same act provides:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in support of said schools.

"But such lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Mineral lands are expressly excluded from this grant, so that the grant is a present, absolute grant to all nonmineral sections 16 and 36 the title of which rested in the United States at the date of admission, whether such lands were surveyed or unsurveyed.

Article 9 of the constitution of Idaho provides for education and the administration of the school lands of the State, and provides that the public school fund of the State shall forever remain inviolate and intact; also provides with rigid care for the administration of these school lands for the purposes expressed in the constitution, and for no other purposes whatever; and also provides that no school lands shall be sold for less than $10 per acre, and that they shall be sold only by public sale, and that not to exceed 25 sections of school lands shall be sold in any one year, and that they shall not be sold in subdivisions to exceed 160 acres to any one individual or company or corporation. The people of the State of Idaho will permit of no lax or forced construction of these constitutional limitations.

It will be observed that the granting words in the section of the statutes above quoted are: "Are hereby granted to said State." Those words have been construed by the Supreme Court of the United States, in the case of Schulenberg *v.* Harriman (21 Wall., 44), and a long line of decisions reaffirming this doctrine in which the court holds that such words of grant constitute a grant in presenti, and that the title, by virtue of such grant, passes from the United States to the grantee absolutely, and is no longer subject to any action or control on the part of the Government or any of its branches.

This is applicable only to the lands comprising sections 16 and 36, the title to which was in the United States on the date of the passage of the Idaho admission bill.

The provisions in the act for the selection of lieu lands applies only as stated, in section 4, to such sections, or parts thereof, as had been sold or otherwise disposed of by or under the authority of the act of Congress at the date of the passage of the admission act of Idaho. For such sections 16 and 36 as had been sold, or otherwise disposed of, prior to the admission act, the State is allowed to select lieu lands in the manner prescribed in section 4 of the act, and not otherwise. And as to such lieu lands the title of the State under the act was not in presenti, but is an inchoate grant to attach when such lieu selections are made.

The real contention on the part of the State is that the title to all sections 16 and 36 within the State, the title to which was in the Government at the date of the admission act, passed co instanti and absolutely from the Government to the State, without further act on the part of either the Government or the State to perfect such title. No selection was necessary because the act designated the land by recognized subdivisions. That as to the lieu lands, or any other lands granted by the State for educational purposes, the grant was not in presenti, such grant being by its terms subject to selection in the future, and the title to such lands would only vest when selection was made and approved.

The decision on which the Forestry Bureau has based its claim of right to include sections 16 and 36 within forest reserves has been based upon an erroneous construction of the statute, and which failed to recognize the distinction in the class of title which passed under the admission act to the different grants of land. The Department has erroneously considered the rule stated by the United States Supreme Court in the case of Heydenfelt *v.* Daney G. & M. Co. (93 U. S., 634); New York Indians *v.* United States (170 U. S., p. 18); Hall *v.* Russell (101 U. S., 503) as applicable to the sections 16 and 36 granted to the State of Idaho by the admission act. In each of the foregoing cases, and in all other cases holding as they do, the granting words were "shall be granted," or other words of similar import, which are not words of present grant, but of a grant in futuro. Such States as Nevada, Utah, and many others were admitted by proclamation pursuant to an act enabling the Territories to form a government, but Idaho, having adopted a constitution and formed a State government, was admitted to the Union without an enabling act, and being in a position to then receive the grant, the grant was in the act expressed in such terms as made it operative upon signing the bill, so far as the sections 16 and 36, to which the Government then held title, were concerned.

The erroneous construction of the law by the Forestry Department as to the time of the attaching of the grant has resulted in it falling into error, under which it has attempted to take from the State the title to sections 16 and 36 granted to it by the admission act for common school purposes.

It is not a question of what it may be desirable to do in the way of creating forest reserves; it is a question of power. Congress can not divest the State of the sections 16 and 36 which passed by the admission act, and the Executive Department of the Government can exercise no more control over these sections than it can over the title to other private property. Neither the legislature, the governor of the State, the land board, nor the courts of the State of Idaho can divest the State of its title to these sections by any act or by acquiescence in the act of another.

The sections 16 and 36 in the splendid timber lands of northern Idaho to which the State has an absolute title, notwithstanding anything that may have been done or that might be done by either Congress or the President or the State officials, are the property of the State of Idaho, to be disposed of only in the manner prescribed by the constitution—that is, by public sale after advertisement in the manner prescribed. The title can not and will not pass by any other method. It is not a question of policy, but one of power. If the State government of Idaho through any of its departments charged with the duty of protecting the State's rights in preserving its property have either by oversight, neglect, or a misconception of their legal duty or of the rights of the State allowed others to take possession of these sections, or exercise control or dominion over them, or to obtain what might be or might seem to be a paper title to them, then such action on the part of such officials has been absolutely void and has tended in no manner to destroy the title of the State in these sections. They were donated for a sacred purpose and under conditions that admit of no change. The legislature has no power to dispose of these lands in any other way than that prescribed by the constitution of Idaho. The General Government in none of its branches possesses the slightest power to control or dispose of them. By attempting to create sentiment in favor of any "policy" of the Government, whether it be the President or his subordinate Departments or of the State, you are but laying the grounds for future embarrassment, difficulty, and trouble for those who, relying upon this mistaken action, may at much cost and trouble to themselves undertake to act upon your suggestion in dealing with these lands. The question is not one of sentiment, but one of law. And the wisdom of Congress and of the framers of the constitution of Idaho in laying down an arbitrary line of action in regard to these lands can not be better established than by the present attempts to deal with them upon the lines of sentiment in disregard of the plain provisions of the law.

Now, I desire it to be distinctly understood that so long as I am a citizen of Idaho, whether in public or private life, I shall exert to the limit of my ability an effort to preserve these lands to the State and to the sacred uses for which they were originally granted, and I shall labor unceasingly in Congress and, if necessary, in the courts to maintain the State's title to these lands. And in the end I can assure you with perfect confidence that the rights of the State in the lands herein suggested will be preserved, and I do not believe that the people of Idaho will elect to office or maintain in office in any branch of the State government officers that would dare to stand supinely by while those splendid timber lands upon sections 16 and 36, amounting to millions of dollars in value, are surrendered by the State in exchange for lands of an indefinite character and value, to be selected in an indefinite field of possibilities. These timber lands, whether sold in this generation or in another, represent an enormous fund for the perpetual maintenance of the common school system of the State of Idaho, and when the people of the State understand the present policy of allowing these

lands to drift into the hands of private speculators or under the control of nonproductive forest reserves, in disregard of the rights of the State, they will express themselves in no uncertain terms in favor of maintaining the title and the rights of the State to these lands, and they will demand a strict accounting at the hands of any officers of the State—executive, legislative, or judicial—who are responsible for the loss or diversion of a single section of these lands. It is absurd to talk about the State being compensated by the selection of grazing lands or lands adapted only to reclamation in lieu of these forest lands, that to the extent of vast areas will scale from 3,000,000 to 12,000,000 feet of white pine timber to the section.

It has been so often and conclusively decided by the Supreme Court of the United States that there is no power in either the Executive Departments of the Government or of the State to exchange or trade off these lands except in pursuance of the direct provisions of the act of Congress and of the legislature of the State authorizing such exchange that any attempt to do so along the lines so buoyantly championed by you heretofore amounts to an absurdity, and would result only in leading people into acquiring imaginary titles that would melt away upon a legal determination of the rights of the parties and of the State, and leave them wiser but poorer because of their experience.

There is no power on earth that can exercise any jurisdiction over sections 16 and 36 which passed to the State by the admission act, except the legislature of Idaho and the State land board, and those tribunals can only exercise the power over said lands within the limitations of the constitution of Idaho. The Government of the United States, however desirable you may consider such action, can not include the State's school sections in the forest reserves or exercise any jurisdiction over them. In my judgment it is well for the State that this is true.

I am convinced that I am acting in the best interests of the State's present and future in the course I am pursuing in this matter, and I believe that the people of Idaho, with few exceptions, will, when they understand the situation, agree with me, and will cooperate with me in any effort on my part, or on that of others, to preserve these lands to the State. If private lumber companies, scrip locators, or lieu-land selectors have laid a hand upon any of the school sections of the State, they have done so in violation of the law, and there is but one plain duty resting upon the executive officers of the State, and that is to institute proceedings to recover any loss which the State may have suffered by reason of the cutting of timber upon these sections, and to dispossess any persons, whether it be those claiming under the railroad land grants, stone and timber selections, homestead selections, or any other class of claim. If the State officers do less than this they fail in their duty. I am justified in believing from the information which I have received that the State has already been damaged to a very large extent by the cutting of timber upon school sections, which have been attempted to be taken up since the admission of the State, under various claims of title, and the matter is so serious that the legislature should investigate this question at the earliest possible date. Every school section the title to which passed under the admission act should be taken up, identified, and an abstract of title made of it, and the facts as to its possession or any adverse claim made to it ascertained and the State's rights fully protected in the matter.

The rights of the State involved in the foregoing consideration amount to many millions of dollars, and the sooner the questions of sentiment in regard thereto are laid aside and the questions of the State's legal rights taken up the better will the people be served and their rights protected.

I have not undertaken to discuss the State's rights to a free and untrammeled field for selecting such lands as it is entitled to select in lieu of other lands, or under its general right to select lands for the several purposes enumerated in the admission act, as I do not desire to confuse the two classes of lands. I will only say, in leaving this question for the present, that the State was granted large areas of land subject to selection, the title to which rests upon an entirely different basis from that of sections 16 and 36, and which do not pass until such selection is made and approved. These selections only being available upon surveyed lands, I propose to attempt to obtain a very much larger appropriation for the survey of Idaho lands, in order that the field of selection may be available within which the State may exercise the right to this second class of lands.

Bear in mind that the State can not give title by consent, nor can it waive its rights to these lands. It can not trade them away or dispose of them other than as provided by the constitution of the State.

Government is not a question of policy, but it is a question of law. The laws are made pursuant to the policy of the people, but until the policy is enacted into law it is not controlling in determining the rights of either the Government or the people.

You speak of the proposed amendments to the land laws as promising new conditions. The proposed amendments are not to be considered in interpreting the existing laws and could in no way affect existing titles to lands.

I have written you this letter for the purpose of presenting the legal phase of this question, robbed of any sentiment or theory, irrespective of whether it is in accord with the "policy" of the Administration or not, and I shall from time to time present some further consideration of this question, and other phases of the forest-reserve question as it affects the interests of the State of Idaho, to you for such use as you may see fit to make of it, and shall at the same time present such views to the people of the State through the most available medium.

Very respectfully, yours,

W. B. HEYBURN.

The VICE-PRESIDENT. The Chair will ask the Senator from Idaho to kindly repeat his request as to the printing of a map.

Mr. HEYBURN. I have requested that the map, a copy of which I have sent to the desk, may be incorporated in the RECORD. It was done on a former occasion in the discussion of this matter, and it will not be very expensive.

The VICE-PRESIDENT. The Chair will state that it may take some days to reproduce the map.

Mr. HEYBURN. The matter was not delayed before. The Printing Office still have the plates, which they can easily adjust in this instance.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Idaho? The Chair hears none, and it is so ordered.

Mr. NEWLANDS. Mr. President, I am in entire sympathy with the purpose which my colleagues have in view, and that is the development of the West. In the thirteen States and two Territories in which the main part of the remaining public domain lies the problems relating to it are of the highest importance. The title to the public domain is in the Government of the United States and is held in trust not for the particular States in which the lands are located, but for the entire people of the United States, wherever resident, for the creation of homes by home seekers and the prosperity and advantage of the teeming population of the future. The people of the Western States do not claim that these lands belong to them; but they do claim that they should be administered in the interest of those Western States with a due regard to the interest of the entire people of the United States; and of course it is in the interest of the entire people that all the Western States should be fully developed, that they should be increased in population and in wealth and in prosperity and happiness.

The land laws under which these lands are being settled are numerous. They have been the creation of many years. For twenty years or more the Executive Department charged with the execution of these laws has been insisting upon it that the laws themselves should be modified and changed in order to meet the interests of the people of the United States and the interests of the people of the West. They have insisted that they were inadequate to the economic requirements of the West, and that being unsuited to the economic requirements they were oftentimes evaded in order to meet them. I take it for granted that wherever a law exists upon the statute book applicable to any particular region that is not suited to the economic requirements of its people they will always evade it.

This contest has been going on for years between the executive department and the legislative department of the Government. Secretary of the Interior after Secretary of the Interior has called attention to the defects in these laws; Commissioner of the General Land Office after Commissioner of the General Land Office has called attention to the defects in these laws; and yet few changes have been made. Congress has been either inert or it has been so divided in judgment upon the questions proposed as to be unable to act.

THE SECRETARY OF THE INTERIOR.

We now have as the head of the executive department of the Government a man who is probably as familiar with the requirements of the West and with the public domain as any President who has sat in the Presidential chair for many years. He is and has been the friend of the West. We have in the Interior Department a Secretary of the Interior who is and has been the friend of the West, and every act which he has done with reference to this very great public domain has been with a view to the promotion of the interests of the West. He has been zealous in the protection of the public domain, realizing its great value to the home seekers; he has been opposed to its absorption by monopolists and speculators. I believe thoroughly in the sincerity of his motives and the value of his service. I believe that his main purpose has been to preserve this great public domain for the home seekers; that his main idea has been the creation of homes and not of great monopolistic holdings, promotive of oppression and extortion. I can not forget his valuable aid to the cause of national irrigation, extended from the very commencement of his service and demonstrated on numerous occasions in his public reports.

I have recently looked over the utterances of the Secretary of the Interior in his annual reports, and I have found that uniformly his text is the preservation of the public domain for actual home seekers. I therefore am not inclined to sympathize or to agree with some of the utterances that have been made upon this floor, which charged the Secretary of the Interior with a malevolent purpose toward the West. I believe that his purpose has been patriotic and helpful to the West.

Nor do I think it fair to fix upon the Secretary of the Interior the entire responsibility for this order of the President under which he is acting and of which many western Senators complain and to exempt the President. We all know that there is a strong, forceful man in the White House; that the question of forestry, the question of irrigation, and the question of homes for home seekers—all these questions have been to him the subject of thought and reflection for years. He is not an uninformed man who would listen to the suggestions of a malevolent Secretary of the Interior and carry out his views instead of his own. If there has been an order made regarding these matters by the President of the United States, I believe him to be familiar with all the facts, and I believe that he has exercised his best judgment upon those facts. If the order is wrong, I believe in holding him responsible for it and not charging the responsibility upon the Secretary of the Interior,

who, after five or six years of faithful service, is now going out of the service of the Government.

THE LAND LAWS—HOMESTEADS.

Mr. President, what are these land laws? They relate principally to the entry of homesteads for home seekers, to the entry of timber lands, to the entry of coal lands, to the entry of mineral lands, to the entry of desert lands. The homestead act was passed fifty or sixty years ago. Its operation has been most beneficent in all the humid States of the Union. The entryman was compelled to take a solemn oath that he had entered the land for himself and not for anyone else, either directly or indirectly. His oath states:

That his application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he does not apply to enter the same for the purpose of speculation, but in good faith, to obtain a home for himself, and that he has not, directly or indirectly, made and will not make any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.

And this was the spirit of almost all the laws relating to the lands of the United States. The intention of Congress was clear that an entryman should make an entry for himself, and not for another, and that these lands, granted so freely by the Government to its citizens, should not in future be concentrated in large areas, and thus establish monopoly either in the lands themselves or in the minerals which they contain.

The homestead law operated beneficently, and why? In early days there was no commutation clause. It was not until 1891, if my recollection is right, that commutation was allowed.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Montana?

Mr. NEWLANDS. I do.

Mr. CARTER. The so-called commutation clause in the homestead law was passed long prior to 1891. As originally passed, it required only six months' residence upon the claim prior to the time the person could commute, pay cash, and procure title. In the revision of these laws, which occurred in 1891, the period of residence was extended to two years. So that as early as 1891 a person desiring to commute must show a residence upon the claim of two years, while six months was the original period.

Mr. NEWLANDS. My impression was that the act of 1891 required a residence of only fourteen months, and of that fourteen months the residence for the first six months was not required to be actual, but was constructive.

Mr. CARTER. I am informed that fourteen months is the present requirement of the statute.

Mr. NEWLANDS. At all events, as I understand, the homestead law as originally framed did not provide for commutation; and under the homestead law the great States of the Mississippi Valley were settled up, and there was little or no concentration of land there. Farms were 160 acres in area, as a rule.

Mr. CARTER. Mr. President, if the Senator will permit an interruption——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Montana?

Mr. NEWLANDS. Certainly.

Mr. CARTER. The largest farming area ever concentrated in single ownership in this country was in the great State of Illinois. It was known as the Sullivan farm. That great farm in operation proved a distinct failure, and the large holding was subdivided. I believe now there is not in what was originally the great Sullivan farm in the vicinity of Bloomington, Ill., a single ownership exceeding 160 acres.

Mr. NEWLANDS. Will the Senator state under what law the 300,000 acres to which he refers were acquired?

Mr. CARTER. The land title was acquired to some extent, I think, from the Illinois Central Railroad grant; to another extent under the old cash-entry system, which obtained prior to 1862, and a portion of it under the homestead act, which was passed in 1862.

Mr. NEWLANDS. Does the Senator know how large a portion of it was acquired under the homestead act?

Mr. CARTER. I have not inquired into the exact details, but the title to the Sullivan farm was acquired, I think, under all the laws to which I have referred.

Mr. NEWLANDS. I think the Senator will find that most of that great farm was acquired by and under those provisions of law that existed before the homestead act, which provided for grants to railroads and for the sale of public lands in almost unlimited areas.

Mr. CARTER. As to that I am unable to speak. My response was to the general proposition the Senator set forth—that in the old or so-called humid States large aggregations of lands never obtained. Large farms, I think, were chiefly obtained under what is known as the cash-entry system, which preceded the homestead act of 1862.

Mr. NEWLANDS. Under that system very large areas of land could be purchased from the Government. I believe there was no limit at that time to the land that could be acquired by direct purchase from the Government.

Mr. CARTER. I think the sales were made in 160-acre tracts, but there was no limit as to the amount any one individual might acquire. It was a question of payment in cash. At that time the Government sought exclusively to gain revenue from the lands. The homestead act marked a departure in the interest of the actual settler.

Mr. NEWLANDS. The Senator is mistaken in understanding that I said there was no concentration of lands whatever in the Mississippi Valley and in the humid region.

Mr. CARTER. I stand corrected, then. I misunderstood the Senator.

Mr. NEWLANDS. What I did say was that, as the result of the homestead act, that entire region was settled up by actual settlers; that, as a rule, the farms were small farms and that there was little or no concentration of land in large holdings.

THE ARID REGION.

Mr. President, the homestead law was suited to that region, but as the lands of the humid region were settled up we had before us the arid and semiarid lands of the intermountain region. There larger areas were required in order to make homes. They were required mainly for cattle ranges. It was impossible for a man who wanted to raise cattle to conduct his operations on a range of only 160 acres. In order to properly graze them, it was necessary to control the water of the range; and so a gradual system of evasion of the homestead law grew out of the necessity of the case. The owner of a large range, finding it incumbent upon him to protect it from invasion by securing the water that might be on it, called upon his rangemen, his vaqueros, to enter lands here and there containing the sources of water supply, and gradually throughout that entire region it was regarded as a legitimate exercise of the privileges under the homestead act to make entries of that kind.

About a year ago I met a man from the East who had a large range in that region—a man largely identified with reform in politics in the United States, a strong friend of the President, and in sympathy with him in his policies and measures. He told me he had this range. I asked him how he had concentrated so large an area in one holding, and he went on to tell me very innocently that the men in his employ had entered lands here and there and had conveyed them to him and had thus enabled him to round out and perfect the control of his range. He was unconscious that this was done in violation or evasion of the law. He is probably approving to-day the many convictions that have been had throughout the entire western region under laws which western men were absolutely compelled to evade in order to conduct their business.

Mr. HANSBROUGH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from North Dakota?

Mr. NEWLANDS. Yes.

Mr. HANSBROUGH. In what part of the country is that land located?

Mr. NEWLANDS. I would prefer not to locate either the land or the man.

Mr. HANSBROUGH. Well, the Senator can give me approximately the location by telling me in what State or Territory the land is located?

Mr. NEWLANDS. I would prefer not to.

Mr. HANSBROUGH. I will say, Mr. President, that no such thing as the Senator from Nevada has described can take place in the State of North Dakota where the lands are valuable, and where men put on the lands for the purposes indicated by the Senator would find that their entries would be contested at once. That is always the case wherever the lands are valuable.

Mr. NEWLANDS. But how about lands that are not so valuable, and where the custom of the range prevails? I will state to the Senator that the State of North Dakota should be classed generally as a humid State. There are certain areas, of course, in that State that are semiarid; but, as a rule, it is a humid State. Therefore, the homestead law is adapted to its requirements, and there has been a great deal of development there of small homes.

Mr. HANSBROUGH. And yet, notwithstanding the admis-

sion made by the Senator, the public lands commission, appointed by the President, and who went to my State for a few days, made a very extravagant report in regard to the extent of the frauds in that State.

Mr. NEWLANDS. I will state, Mr. President, that there is not the same economic reason for the evasion of the land laws in the State of North Dakota as there is in the semiarid States of the country, but I am inclined to believe that there have been many evasions of the law there that were not compelled by economics.

I believe that the commutation clause of the homestead act has in many parts of North Dakota been used to defeat the purpose of that act. I am told that there are land companies organized there that advance to the man who enters under the homestead act the money necessary to make his entry and to make the cultivation that is required, etc., to comply with the act, and that by the wholesale these lands, after the expiration of fourteen months, are transferred to these land companies, and that thus speculative holding of large areas of land has been developed. The homestead act does not contemplate speculation, but home building.

Mr. HANSBROUGH. Does the Senator from Nevada claim that such a thing takes place in the State of North Dakota?

Mr. NEWLANDS. I do not know it of my own personal knowledge.

Mr. HANSBROUGH. If the Senator makes a claim of that kind I want to say that he is entirely mistaken. The records will show that throughout the State of North Dakota almost every quarter section of land has a settler upon it, and those settlers are to-day living there in the snow 2 and 3 feet deep in order to perfect their residence and prevent contests against their land.

Mr. NEWLANDS. Will the Senator deny that in the State of North Dakota there are many farms of from 1,000 to 5,000 acres in area?

Mr. HANSBROUGH. Mr. President, in parts of the State of North Dakota, especially in regions where there were land grants and where men in former years took advantage of the opportunity to acquire land under those land grants there are farms of from one to five thousand acres; but, outside of those land-grant areas nothing of the kind described by the Senator takes place, nor can it take place.

Mr. NEWLANDS. Will the Senator insist that outside of those land-grant areas there are not also farms of very much greater extent than 160 acres?

Mr. HANSBROUGH. Oh, yes, Mr. President, there are many farms outside of the land-grant areas of 500 acres and over, and some of a thousand acres, I do not doubt.

Mr. NEWLANDS. And some of two or three thousand acres?

Mr. HANSBROUGH. But they were not acquired illegitimately. They were acquired precisely as the Senator would acquire land if he were there in the land business. If he himself had settled upon a homestead in the earlier days and had profited thereby, making a little money from year to year, he would have invested his profits in an adjoining quarter section of land, and he would have had the right to do that without any evasion of the land laws.

Mr. NEWLANDS. Mr. President, I have no personal information upon the subject, but I understand the condition to which I have referred largely exists in some portions of North Dakota and that farming entries are made under the homestead act by people who are not farmers—by school-teachers, by clerks, and by others either residing in the community or residing far away—that they reside there apparently for fourteen months, six months of the residence being merely constructive, under the requirements of the Land Office, and eight months only of actual residence being assured, and that at the end of fourteen months in very many cases these people, who had sworn that they entered the lands simply for themselves and not for others, got title to the land and then immediately transferred it to the great land companies which have advanced them their expenses meanwhile, and that there is a considerable speculation in these lands in that way.

Mr. HANSBROUGH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from North Dakota?

Mr. NEWLANDS. Certainly.

Mr. HANSBROUGH. I have no doubt there are some isolated cases similar to the case the Senator describes; but I will say to the Senator that that is not the rule in the State of North Dakota or any place else on the public domain where lands are valuable.

Mr. NEWLANDS. I do not contend that it is the rule. I have no doubt it is the exception. But it is the duty of the President, charged with the execution of the law, to see that these exceptions do not occur, and it is the duty of the Secretary of the Interior to see that these exceptions do not occur.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Minnesota?

Mr. NEWLANDS. Certainly.

Mr. CLAPP. Without any criticism and without desiring to press any advantage, I suggest to the Senator, speaking of duty, that if he knows of the case where this ranch was taken up by these improper methods, whether it does not rise almost to the dignity of a duty to place the facts before some one who can investigate the case?

Mr. NEWLANDS. I have already stated to the Senator that I know nothing of personal knowledge regarding North Dakota.

Mr. CLAPP. But the Senator stated that a gentleman told him that he himself had done it, as I understood, and when the Senator from North Dakota asked where the land was located the Senator felt that he was not obliged to state where it was. It was certainly a violation of the law.

Mr. NEWLANDS. All I can say is that the Senator must have a very poor opinion of me if he thinks I would take advantage of a private conversation with a gentleman who made so naïve and innocent a confession under the conditions stated.

Mr. HANSBROUGH. I think the Senator from Nevada should state whether this transaction took place in the State of North Dakota.

Mr. NEWLANDS. Every other Senator then might ask me the same question with respect to his State, and in the end you would locate the State in which the transaction took place.

Mr. HANSBROUGH. I am satisfied that it did not take place in the State of North Dakota. I think the Senator knows that, too.

Mr. NEWLANDS. I am not making any special charge against the State of North Dakota.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Minnesota?

Mr. NEWLANDS. Certainly.

Mr. CLAPP. I rose to remark that I am somewhat charmed by the use of the word "innocent" in reference to the gentleman's transaction in acquiring the public domain under the circumstances the Senator stated.

Mr. NEWLANDS. I repeat it. The gentleman was entirely innocent in the transaction. He did not know what the law was. He turned the matter over to his agents and accumulated a large area of land in this way.

I can recall myself that many years ago, when I was practicing law, I went to look at a large cattle range which an English friend was thinking of purchasing, consisting of a large number of cattle and a very wide range of land; and I went over the range, talked with the vaqueros and the superintendents and the foremen, and they were all talking about the manner in which they were completing the title to that range. I found that every one of them made some entry, most of them under the homestead act, and they were making these entries simply in the interest of the owner of the range. It was so much the custom of that part of the country that they did not realize that they were offending against the law.

MISFIT LAWS.

I am making no charge against the State of North Dakota. These conditions prevail in every one of the Western States, and I insist upon it that they prevail because the Congress has never yet shaped the laws so as to suit the economic requirements of the country, and such laws will always be evaded; and I insist upon it that the fault is largely with Congress. As it is, we have laws inadequate to the development of the West, and the West must grow, law or no law, and will grow, law or no law; and I insist upon it that it is much better for us to change the laws so as to meet the economic requirements of the West than to let the present conditions remain under which the President, sworn to execute the law, is landing men in jail who at heart and judged by their environment are as innocent of any intentional wrong as the gentleman who gave his account to me of the manner in which he accumulated a control of a large area of land. It makes me heartsick to read here of clergymen and others being indicted in the West for making entries under the land laws, without any conception of the guilt involved in the act.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Montana?

Mr. NEWLANDS. Certainly.

Mr. CARTER. The Senator states that the economic conditions in the country referred to are such that the 160-acre homestead claim is wholly inadequate to meet the conditions.

Would he so amend the law as to permit of the acquisition of a much larger area of land by a single individual?

Mr. NEWLANDS. I am not prepared to state now what changes I would favor. That would be a digression from my present purpose. What I do insist upon is that it is the duty of the Senators and Representatives from the West, who are more familiar with these conditions and who are familiar with the laws, to get together and recommend to the Congress of the United States laws that will meet these conditions. I should expect in such a conference to give and take, to accommodate my views in many particulars to the views of my associates with the purpose of securing harmony of action. I would expect that we would arrive at a pretty nearly unanimous conclusion, and I believe that our recommendations to the Public Lands Committee of the Senate and the Public Lands Committee of the House would be crystallized in legislation within six months afterward.

We had the same experience with the irrigation question. The men of the West had been engaged for years in educating Congress upon the subject of irrigation, in educating the humid region as to the requirements of the arid region. They were not only educating the Congress, but educating the country at the same time, and when the public sentiment of the entire country was ripe for action we found that we differed among ourselves as to the kind of law that should be passed, and we were in danger of making a spectacle of ourselves in Congress and before the country and of defeating the entire movement by the divergence of our views.

Some were in favor of nationalizing irrigation. Some were in favor of confining it to State lines. Some were in favor of the cession of all of the arid lands to the States. Some were in favor of giving the States the absolute control over the waters stored by national action. But as the result of this divergence of views we concluded to come together, and we met and appointed a committee from thirteen States and three Territories, consisting of one Senator and one Representative from each State, and that committee appointed a subcommittee of seventeen, and the subcommittee held sessions consecutively for thirty days. At the end of that time the committee of seventeen reached a unanimous conclusion, and they presented their conclusion to the general committee, and it was adopted after much discussion. Then it was submitted to the committee of the Senate and of the House, approved in almost all its features by them, and within a few months afterward was triumphantly passed by Congress.

That law has given universal satisfaction and will give still greater satisfaction, and the Western Senators and Representatives took the very position which Mr. Hitchcock and Mr. Roosevelt have always contended for and do now contend for, that not only the reclamation act, but all the land laws should be administered in the interest of home seekers and with a view to preventing monopoly.

LAND MONOPOLY.

The purpose of Congress has been honest throughout the entire history of our legislation upon this subject. Look at every one of the statutes relating to public lands and you will see the purpose clearly is to avoid land monopoly, and yet we know that under these very laws monopoly has been built up in the West.

We know that in the State of Colorado the Colorado Iron and Fuel Company is in control of almost all the available coal fields of that State. We know that it has become a great power industrially and politically. We know of the methods by which it has obtained favored transportation. We know how strong a factor it has been in politics and how potential it has been in controlling the State, and yet if you survey all the lands that are in the ownership of this corporation to-day and which constitute its wealth and give it so great a political influence and strength, you will find that thirty years ago every acre of those lands belonged to the people of the United States.

We know that under the land laws of the United States large areas of land have been concentrated in the arid region and on the Pacific coast. We know that in the San Joaquin Valley one ranch of 300,000 acres was concentrated under these laws. We know that there is one firm in California that owns over a million acres, of which the larger proportion was the property of the entire people twenty-five or thirty years ago.

Now, these are the conditions that exist. Congress never intended that they should exist. Congress intended——

Mr. PERKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from California?

Mr. NEWLANDS. Certainly.

Mr. PERKINS. I merely wish to remind my friend the Senator from Nevada that these large areas in California were, as he is aware, principally Spanish grants of land, and when California was admitted into the Union those titles were recognized. It is a curse to the State, I admit, but it is not due to the land laws of our own country.

Mr. NEWLANDS. The Senator states that these great ranches are a curse to the State, and in that sentence he recognizes the evil of land monopoly, which Congress has always intended to avert, but which it has failed to avert.

It is true, as the Senator says, that many of these ranches consisted of grants made by the Mexican Government, and that the rights were vested and that the United States Government was compelled to recognize them, notwithstanding the fact that they have arrested and delayed the economic development of that State. But in the two instances that I speak of, where there have been these concentrations of lands, only twenty or twenty-five years ago the land belonged to the Government of the United States. I can point the Senator to numerous ranches there of very large extent—from fifty to a hundred thousand acres—that consisted originally of Government land, and I believed that the bulk of the land held by this great firm of which I speak was originally Government land.

THE TIMBER MONOPOLY.

Now, we also know that the timber lands are being concentrated in very large areas.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. Before leaving the question of the homestead lands, I would inquire of the Senator whether or not the fact that these large areas exist because of some violation of the law in the past, perhaps, would be any justification for suspending the entry of valid homesteads at this time, as by the order set forth?

Mr. NEWLANDS. I do not feel called upon to defend the order made by the President. I am not sufficiently well informed to form a judgment regarding it. What I do know is that it is his duty to execute the law, and that his duty is not to turn over to any man lands that have been fraudulently acquired, and it is his duty to see to it that every precaution is taken against fraudulent entry and fraudulent patenting, and Congress has authorized him to make the rules and regulations necessary to carry out the intent and spirit of the land laws. I am prepared to give him the aid necessary to accomplish this. I deplore the tying up of the patents as much as anyone, but I think this difficulty will be best solved by cooperation between Congress and the President in securing good administration and good laws, rather than by an unnecessary antagonism.

Mr. HEYBURN. I should like to ask the Senator what law is being executed by the President in suspending the entries of public lands by homesteaders who are not charged with fraud?

Mr. NEWLANDS. I may say that the duty devolves upon the President, upon the Executive Department, of segregating the fraudulent from the honest, and that that necessarily means some kind of an examination under the law.

Mr. HEYBURN. But what law is he executing in suspending those that have been examined, passed upon, and approved and only await delivery of patent? What law is he executing?

Mr. NEWLANDS. As I stated, I am not prepared to defend the order of the President—it may have gone entirely too far; I think it has in many particulars—but I do say that the purpose which has animated him has doubtless been that of the faithful execution of the laws in their spirit and their intent, and I also contend that Congress has been at fault in not providing laws that are suited to the requirements of this region, which is entirely different from the humid region which was first settled up.

Now, as to timber lands, we all know that there have been large concentrations of ownership in timber lands in the West, and with reference to that I have another illustration in the naïve confession of a man interested in entering up timber lands. I was a member of the El Paso Irrigation Congress and on the committee on resolutions when the question came up there as to what the policy of the West should be regarding the land laws. We had under consideration the timber act. There was a gentleman there from the State of Minnesota, whose name I can not recall and whose name I would not give if I could recall it. He stated in that committee that he had started in life as a poor boy and that he could now write his check for $500,000, and that his money had been made entirely in the lumber business. He insisted upon it that these lands ought not to be held by the Government unutilized; that it was to the interest of the entire people that they should be so divided up and sold as soon as possible, and he went on to say how beneficial the sale of timber lands had been to different

people that he knew. He instanced the fact that from his own State many clerks and school-teachers, male and female, had gone out to the West and, under these laws, had entered timber lands, and that each one of them had made $500 or $600 upon the transaction. He seemed to be entirely unconscious of the fact that in making these entries of timber lands and turning the lands over to corporations and syndicates for profit they were violating and evading the law, and he asked us whether we ought to prevent these good, honest people from making a little money in that way. He was entirely unconscious, apparently—doubtless he had been in the same transactions himself, for his entire conversation indicated it—that there was any moral offense in the matter, and yet the very people of whom he spoke and people like them are doubtless subject to punishment under the law.

The timber laws are absolutely unsuited to the requirements of the West. We all know that in order to establish the lumber business it is necessary to have large capital; that you must have large saw and planing mills; that you must build railroads; that you must construct wagon roads. In many cases these enterprises, in order to produce lumber at a reasonable price, require a capitalization of from $1,000,000 to $2,000,000, and yet our law restricts a man to the entry of 160 acres, and assumes that the entire lumber business of the country can be conducted by numerous people, each one of them owning only 160 acres. Clearly, in order to meet the economic requirements of the lumber situation, it is incumbent upon us either to provide that these lands can be sold in larger areas or to recognize that the best way of managing the lands is to hold them in communal form, selling only the stumpage and giving everybody an equal chance to purchase the timber upon the land.

In the latter way we could, if extortion or monopoly prevailed, control the prices of the product, and we must admit that if consolidation takes place to such an extent as to make competition impossible in any product, in the end it is the duty of the Government itself to fix the price of that product; that whenever competition becomes impossible it is the right and it is the duty of the Government to fix the price.

So we have here a condition absolutely unsuited to the requirements of the entire country. We have here a condition where the laws are being evaded and where vast lumber companies have been organized, which have employed people to enter these timber lands, not for their own individual use, but for monopolistic use, and when the entry was complete and the title obtained, the corporations themselves have secured the title. We have built up in the West the great lumber trust of which the Senator from South Dakota complained in his admirable speech the other day. The whole tendency of the law as it now stands upon the statute books is toward the promotion of fraud and perjury and the creation of monopoly.

I ask, when these conditions exist and when the Secretary of the Interior and the President of the United States are making an effort by the administration of the law to break up the existing condition of things, whether it is not very much better for us, instead of attacking them for perhaps overzeal in the administration of the law, to show some speed in reforming the law. We alone can do that.

PERCENTAGE OF FRAUD.

Mr. HEYBURN. I should like to ask the Senator whether it would not be more correct to say "in an effort to fail to execute the law?" Is not the effort rather to avoid executing the law than to execute it when it stops its execution entirely?

Then I should like to remark to the Senator that it is rather a strong indictment of the American people to suggest, as his remarks might possibly be held to suggest, that all of these entries of timber lands were tainted with fraud. Is it not probable that the percentage of fraud is very slight and that a great many people honestly and earnestly seek to comply with the law?

Mr. NEWLANDS. I am not aware that I have insisted that all these entries were fraudulent.

Mr. HEYBURN. The Senator did not make any exception.

Mr. NEWLANDS. On the other hand, I did not state that all of these entries were fraudulent, nor do I so contend.

Mr. HEYBURN. Less than 1 per cent have been found to be illegal.

Mr. NEWLANDS. Let us inquire into that 1 per cent. The Senator from Montana [Mr. CARTER] touched with great force upon that. He showed from the records that of all the numerous entries that had been made less than 1 per cent, I believe, had been canceled, and he assumed, therefore, that that 1 per cent was all that ought to have been canceled. That is not a fair assumption. If, as the President and the Secretary of the Interior insist, they have not, under existing law, a sufficient force of men to discover and make apparent the frauds which they have reason to believe exist, then it is very clear that if we do not furnish them with the agents and with the machinery to detect these evasions and violations of the law the number of actual cancellations of patents that are made does not show necessarily the sum total of the frauds or evasions that have been perpetrated.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Montana?

Mr. NEWLANDS. Certainly.

Mr. CARTER. I merely rise to suggest to the Senator that the Interior Department, on its estimates, has been provided by the Congress with appropriations for the supervision of these land entries for a number of years gone by, and that if the Department needed more money it simply failed to call for the sum it needed. Congress has responded by appropriations equivalent to the estimates.

Before resuming my seat I wish to call the Senator's attention to another state of facts. He suggests that in the Northwestern country a great lumber trust has grown up. I have no doubt that is true. But it originated only to an inconsiderable extent through individual effort. The great railway land grants, embracing large areas of timber land, supplemented by what is known as the "lieu-land scrip" under the act of 1897, eventuated in these great consolidated holdings. I call the attention of the Senator further to the fact that the predecessor of the present Secretary held that the act of 1897, relative to the selection of lieu lands, did not apply to land-grant railway companies.

The Land Office force, I am informed, contended likewise for that construction. But they were both arbitrarily overruled, and over 2,000,000 acres of timber lands were passed to these monopolistic holdings under the rulings of the present Secretary, under the guise of lieu land selected, or land taken in lieu of other lands embraced in forest reservations.

Another strange fact is that when Congress finally determined to repeal that law, the Secretary of the Interior insisted upon preserving the integrity of a contract he had made without any rhyme or reason, without any requirement of law, whereby certain lands in what is known as the "San Francisco Forest Reserve," in the Territory of Arizona, were made the basis of these lieu-land selections, with the remarkable provision in the contract that the railroad company in its grant of land could first cut off all the timber on the base lands proposed to be incorporated in the forest reserve, and might then take of the virgin forests in the State of Idaho lieu land for the land they had stripped of the timber under the contract with the Secretary in the Territory of Arizona. By and through the original land grant and the lieu-land scrip held by the Secretary to be applicable to the land-grant railways, these great consolidated holdings, now the basis of the lumber trust of the Northwest, were permitted, and I do protest against charging that kind of an operation to individuals honestly engaged in attempting to acquire title to public lands under the laws of the Government.

Mr. NEWLANDS. Mr. President, I am, of course, prepared to admit that a very large proportion of the concentration of the timber land of the country is due to the land grants, and that a very large proportion is due to the lieu-land law to which the Senator refers. If that is so, it simply demonstrates that in the past the Congress of the United States in passing its laws and possibly the executive branch of the Government in administering them have been very prodigal of the public domain.

But if that is true, it is all the more incumbent upon us not to be so prodigal now, when two-thirds of the public domain is exhausted and the portion in the arid and semiarid region alone remains. That country is capable of supporting a hundred millions of people if we keep it for home seekers and keep it out of the hands of combinations and monopolies.

I am not prepared to answer what the Senator says regarding the administration by the Secretary of the Interior of the lieu-land law. If he held that the lieu-land law applied to railroad corporations, I have no doubt the opinion was honestly held, and I have no doubt it was given upon legal advice.

Mr. CARTER. I raise no question as to that. It is as to the result I speak.

Mr. NEWLANDS. But the lieu-land law was passed by Congress. If there are any loopholes in the lieu-land law, Congress is responsible for it, and it only illustrates my argument that it is of the highest importance that we men of the West should settle this question amongst ourselves by appropriate legislation.

NO INDICTMENT OF THE WEST.

The Senator from Montana implies that I am indicting the honesty and the integrity of the West in what I have said. It is not so, Mr. President. I am only indicting the honesty and the

integrity of a few men in the West and a few men in the East who aid in the evasion of the land laws in the West, and I am exceedingly charitable in my construction of their offenses. I have insisted throughout that however we may feel upon the moral presentation of the case regarding the guilt or the innocence of a man who is charged with a certain offense, we must realize that if we pass laws which are unsuited to the economic requirements of the country, we must expect their evasion.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. I would suggest to the Senator from Nevada that the difficulty arises in a large measure out of the use of general terms. We have had at no time a statement as to either the men who have made fraudulent entries or the land that has been fraudulently entered. These statements have always come to us in the form of a general statement.

Now, how many individuals by name does the Senator suppose that we could have enumerated to us by the Secretary of the Interior, if we were to call for it by enumeration, who had taken up land fraudulently, either under the timber and stone act or under the homestead act? It would be interesting to ascertain how many tracts of land they would be willing to say had been entered in violation of law, and it would be interesting to ask of them the names of the individuals. Then we would be in a position to say to them, "Why do you not cancel these entries? If they were obtained or entered in violation of the law, why does not the United States Government, instead of dealing in a general indictment against the whole country, particularize it so that we may separate those who are charged from those who are not?" Would it not be a very proper method of procedure to call upon the Department for a list of the fraudulent entries that had so impressed them as to cause them to suspend all entries?

Mr. NEWLANDS. I think it would be a very proper procedure on the part of Congress. I do not know whether Congress has ever taken that action or not. If it has not, it has been derelict.

Mr. HEYBURN. We are entitled to the names.

Mr. NEWLANDS. Mr. President, it was my purpose to have read some extracts from the reports of the Secretary of the Interior showing that throughout he has had the purpose only of the equal and harmonious development of the West, with equal rights to all and special privileges to none, and with a view to promoting the development of the West for the homes of home seekers. I will ask leave to insert those excerpts in my remarks.

The VICE-PRESIDENT. Without objection, permission is granted.

THE COAL LANDS.

Mr. NEWLANDS. Now, Mr. President, regarding the coal lands, we know that almost all the coal lands of Pennsylvania have fallen under one control. We know that almost all the coal lands of West Virginia have fallen under one control. We know that almost all the coal lands of Colorado have fallen under one control. I ask: Is it not incumbent upon us to take up that question and see to it that the fuel supply of the great Western region is not in any way monopolized?

The suggestion is made by the President that we should provide for leasing these lands, at the same time disposing of the surface in some way so that it could be used for agricultural purposes. That is one solution. It is a solution that I have been inclined to favor, and at the last session of Congress I introduced a bill upon the subject, a copy of which I shall insert in my remarks. The bill is as follows:

A bill (S. 5441) authorizing the President to reserve coal and lignite underlying public lands for future disposal.

*Be it enacted, etc.*, That the President of the United States may, from time to time, set aside and reserve in any State or Territory having public lands underlaid by beds of coal or lignite of commercial value such areas as, in his judgment, should be held for future disposal of the coal or lignite. And the President shall by public proclamation declare the establishment of such reservations and the limits thereof. The title to and the right to the use of the surface of such land may be disposed of in accordance with existing law; all conveyances of title, however, from the United States shall contain the provision that the coal or lignite underlying said land is reserved for the use of the United States, together with such rights of way as may be necessary for the mining and removal of the coal or lignite, in accordance with commercial usages; such reservations shall be put under the control of the Geological Survey of the Interior Department, and the Secretary of the Interior shall report to the Congress his recommendation regarding the best method of disposing of such coal and lignite with a view to preventing monopoly and extortionate prices.

Another solution is in granting these lands to provide plainly against their concentration hereafter in monopolistic holdings.

But whatever our view may be as to whether those lands should be held in a communal form for the entire future, the Government leasing them, fixing a moderate royalty for the extraction of coal, and maintaining a control over the price so as to prevent monopoly, or whether they should be sold and granted as heretofore to individuals under restrictions against monopoly, we must admit that the present laws are entirely inadequate.

In coal development, just as in timber development, it is essential to hold the control of a considerable area of land, in the interest of the public as well as the promoter of the project. Every coal enterprise involves an expenditure of a large sum of money, if it is conducted in such a way as to produce the coal as cheaply as possible. You must locate a town, you must build a town, you must provide waterworks and gas works and electric works. You must provide houses for the laborers, for the development of a coal mine on a western prairie means town development as well as mine development. It is absolutely essential, therefore, that an expenditure of large sums must be made.

Now, assume that we are going to intrust the development of our coal region to individual enterprise. Can we expect to enlist capital in the sums required under the present law, which permits an individual to take up only 160 acres? If we hold on to our present system we must increase the area of entry, and in order to do that we must change the law. I ask whether it is not a great deal better for us to address ourselves to changing the law, adopting either the communal system of leasing or the individual system of large holdings, with restrictions upon monopoly, if possible, than to be arraigning constantly the Secretary of the Interior and the President of the United States for attempting to enforce existing laws and to prevent the accumulation in one holding of a large area of land, which, whilst entirely desirable, is forbidden by the existing law the President is sworn to execute?

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. The suggestion of the Senator from Nevada characterizing the discussion that has taken place as an arraignment of the President or the Secretary hardly states the character of the discussion correctly. The discussion has not been in the nature of an arraignment of the President or Secretary. It has been a reply to an official message sent to this body by the President, in which, instead of the Senate having gone out to hunt a controversy, it is merely meeting one that was sent in here. It is not the question of the manner of the execution of the law that we have been discussing, but it is the question of the refusal to execute the law that we have been discussing.

Mr. NEWLANDS. I do not wish to characterize in any offensive way the very eloquent presentation of this matter that has been made by the Senator from Idaho and the Senator from Montana, but I thought in using the word "arraignment" I was using a very mild term as expressive of their utterances upon this floor.

THE FOREST RESERVES.

Mr. President, regarding the forest reserves, the Senator from Idaho complains of these reserves, and I must confess that his statement rather staggered me, that nearly one-third, I believe, of the entire area of his State had been taken up in forest reserves. I can understand how a State would watch with some apprehension the withdrawal from entry or the opportunity of private ownership of so large an area of the State.

It is possible that too large an area has been reserved; but so far as the general policy of the forest reserves is concerned I am satisfied that not only the people of the country sustain it, but that the people of the West sustain it. I think that the Senator, if he polls his own State regarding it, will find that the great majority are in favor of this policy of forest reserves.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield further to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. In reply I will say that I have no hesitation at all in stating for either the present or the future responsibility as to the fact being proved to be true, that 90 per cent of the people of Idaho are opposed absolutely and unqualifiedly to the forest-reserve policy which has resulted in withdrawing from the possibility of settlement 18,000,000 acres, or any considerable portion of it. I know the sentiment of that people. I have been with them.

Mr. NEWLANDS. I was speaking of the general policy.

Mr. HEYBURN. I am speaking of the general policy.

Mr. NEWLANDS. I thought the Senator confined himself entirely to that particular exercise of policy.

Mr. HEYBURN. Mr. President, a few days ago the Live

Stock Association of Idaho, in regular annual session, by a resolution in unqualified terms condemned the forestry policy of the Administration. They repeated it at Salt Lake, in the neighboring State. And they were looking at it from the standpoint of men who come most nearly having their interests along those lines.

GRAZING LANDS.

Mr. NEWLANDS. I know that the cattlemen of the West and the sheepmen of the West have been very much opposed to any interference at all by the Government with their use of the great grazing lands of the West, and they have resented any suggestion that the Government should in any way exercise control over its own lands in the interest of peace, the peace of the range, and in the interest of a proper development of the grazing resources of the lands. But I have found that there has been a great change of opinion among these men. I saw the other day a resolution adopted by, I think, the General Association of Cattlemen, looking to devising some system of control by the National Government. I am not sure whether it extended to an indorsement of the forestry system or not. My impression was that it did. But I am sure that it extended to this suggested system of control over the grazing lands.

Mr. WARREN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Wyoming?

Mr. NEWLANDS. Certainly.

Mr. WARREN. My observation has been that the live-stock associations that have met of late have not declared opposition to the principle of the forest reserves, but they have taken exceptions to the large areas called "forest reserves" where they have included within their lines open parks not in the judgment of live-stock men necessary for forestry purposes, and in which live stock is prohibited from grazing or a smaller number are permitted within them than they believe should be allowed. Stockmen have also, in some instances, taken up the matter of the price charged and believe that it has been excessive, especially as to sheep. But I think generally the live-stock men recognize the necessity of taking care of the forests as such, wherever forests now exist or where young trees have started or will grow, but they require the use of the balance of the public domain and are taking exceptions to, first, the size of these reserves; second, the numbers of stock admitted, and, third, the price charged therefore, especially as to sheep. That is my information.

Mr. NEWLANDS. May I ask the Senator from Wyoming whether my statement is not correct, that the stockmen are gradually realizing the importance of the Government in some way controlling the range itself, recognizing the associations as factors in that control?

Mr. WARREN. I am very glad to reply to that. I have given it a good deal of attention, all the more so because I have been called upon of late to act in certain committees. There is the same condition as to live stock grazing on the public domain and the government thereof as prevailed a few years ago as to irrigation. There are so many different minds and so many different policies that it is unsafe, and it would be untrue to say that any definite, particular policy is that of the live-stock men.

In my State there are some that are opposed to any kind of control of the public domain, and especially so of the grazing portion. On the other hand, there are a great many—and I will say that this number is composed usually of those who have been longest in business and who have had diversified stock, and who have provided food for their stock in winter, and who desire to use pastures—who are in favor of either the Government controlling or passing it to the State to control it, so that all the unoccupied grazing land may be sold or leased and parceled out amongst those who have the best right to use it. But there is, I think——

Mr. NEWLANDS. Do they not recognize the fact that under the unrestrained use of these great areas for grazing——

Mr. WARREN. I am coming to that.

Mr. NEWLANDS. The public peace is endangered for one thing, and that the destruction of the grazing itself will be gradually assured?

Mr. WARREN. I am coming to that. The main objection that the live-stock men make to the Government controlling it absolutely is that those that will control it, if from headquarters here at Washington, will not exercise the same care and judgment in the division of the ranges and will not be as liberal in the rental as they think is necessary. Therefore they feel that there should be a local government, or at least a dual government of the land, composed partly of those at home on the ground and partly the General Government.

All stock men realize that the time is rapidly approaching when the limitless open-range business must cease, or when there must be some control, some partitioning up of the grazing lands not fit for settlement. And they all realize that as to Government property the Government has the undoubted right to control.

The burning questions are, Has the time arrived for action, and how can the matter best be handled to benefit settlers, live-stock men, and the Government, as the General Government is simply trustee for all the people?

Mr. NEWLANDS. They all recognize the fact that there must be some legislation upon the subject, but they differ as to the form of legislation, as I understand the Senator.

Mr. WARREN. Yes. There are many who believe that after a certain time the remaining grazing lands should be sold. There are others who believe that they should be intrusted either to the State or to certain representatives of the State, or to a board in which the State has equal control with the General Government, that they may be rented subject to entry, and that the proceeds should be devoted to the furthering of the reclamation of the arid lands or the building of good roads, or to the bearing of some portion of the burden in the locality where they lie, instead of expecting that those who have title to their lands must pay all the taxes and the Government, in the control and ownership of a part of the land and through the unusual withholding of title to other lands, keep out from taxation a large proportion of the neighborhood property. They believe the proceeds, whatever they may be, of the public domain ought to be expended in the locality, or nearly so, where the land lies.

Mr. NEWLANDS. Mr. President, the remarks of the Senator from Wyoming [Mr. WARREN] simply illustrate my contention that there is not only need of legislation regarding these public lands, but there is a demand for it. There is a demand for it upon the part of those who have hitherto absolutely resisted any legislation—the men who have expected to use the public domain of the West as a vast common for the grazing of their cattle. They realize that this system results in constant contention between the varying interests of the cattlemen and the sheep men, resulting often in violence and in murder. They also realize that it involves a wasteful use of the public domain prejudicial to their own interest; that under the present system it is the interest of every man to crowd as many cattle upon the domain as possible, for if he does not crowd them his neighbor will. The result is that there will be too many cattle upon this domain, and they will be put upon the grass at times when it is unwise that the lands should be trodden by cattle. Every consideration of their own interest demands that there should be some adjustment by law of this question. It simply illustrates my contention that it is the duty of the men from the West to present a solution in the shape of a rational law.

I do not undertake to say now what that law should be. I should imagine that the best temporary resting place possible would be to have some kind of leasing law, administered in connection and consultation with these cattle associations. By a gradual process of evolution we will work out a perfect system, either resulting in the communal holding of the lands or their gradual division and segregation into individual holdings, and always maintaining the right of the small farmer and home-seeker to enter and possess.

PROFITS OF ADMINISTRATION.

I think the contention of the West is a correct one—that these lands should not be administered for profit by the Government; that a certain proportion of the proceeds from the leasing should go into the local treasuries, with a view to local improvement. It is unfair to put the entire burden of taxation upon those who happen to have the legal title to their possessions. I think we should have this in view in our administration of the timber lands and the coal lands and the grazing lands; and whatever law we shape should provide for the assignment of a proper proportion of the proceeds realized to local government—municipal, county, and State.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Oregon?

Mr. NEWLANDS. I do.

Mr. FULTON. I ask the Senator if he does not think that the entire proceeds from these lands, above the necessary cost of administering the law and taking care of them, should go to the States in which they are located?

Mr. NEWLANDS. I think so—either to them or to the irrigation fund or some other fund for western development.

Mr. FULTON. If these lands are to be held as forest reserves, or to be retained for leasing purposes, it will be withdrawing from the territory of the State a vast amount of land that can not pass into private ownership and therefore can not

contribute in any way to the industrial life of the State. It is a very serious proposition to many of the Western States.

Mr. NEWLANDS. It undoubtedly is, and I think the question should be solved in that way.

Mr. President, I should be glad to go on in the consideration of these various laws and their imperfections and the necessity for their amendment, but I am admonished that the time for adjournment is near at hand, or has really passed, so I will only add a few words regarding the forest reserves.

While it may seem that this power has been exercised to a very prodigious extent in the State of Idaho, I have no doubt that, with a little patience, the whole system will work satisfactorily to the people of that State. If we can encourage there the spirit of cooperation instead of the spirit of resistance, I am sure that the forestry laws will be satisfactorily administered there, as they have been in the other States of the Union.

For my part I feel a pride in the great services of the National Government relating to the West; I feel a great pride in the Reclamation Service; I feel a great pride in the Forestry Service; I feel a great pride in the Geological Survey. I have attended most of the irrigation congresses that have been held in the West. They are held annually. Each consists usually of about a thousand members selected from representative men of all the States of that region. It has been the custom of the Forestry Service and the custom of the Reclamation Service to meet at these great congresses. They have held conventions of their own at the same time in the same place. They have adopted a system of exposition to the people of that region that has been exceedingly satisfactory to them. They have brought the people of that region into practical cooperation with them. They have listened to their suggestions, they have presented their plans, and they are no longer regarded as an invading army of impractical theorists determined to push their own views upon the West. I think we find universally that they have been possessed by the spirit of accommodation and of helpfulness. I believe in the end that the difficulties which the Senator from Idaho [Mr. HEYBURN] seems to have encountered in his State will be entirely solved. I can understand how in making a reservation in the first instance it may be necessary to inclose some of the State lands; but certainly if the State lands have rights, the national lands also have rights. If the State lands happen to be entirely surrounded by national lands, I do not see that there is any great impropriety in the official who has control of the national lands requiring that a permit should be issued to the occupant of the State lands before allowing him to take his cattle over the forest lands. Proper administration of the forest land and protection against fire make this a reasonable requirement. It simply means order instead of chaos.

Mr. HEYBURN. Mr. President, let me ask the Senator, would it not be more appropriate that the State, inasmuch as it is surrounded by national lands and being the government nearest at hand, should control the area that included both classes of land? Is it not probable that the State government, being on the ground, could more effectually conserve the interests of both the State and the nation inasmuch as their lands were equally within the area?

Mr. NEWLANDS. But, Mr. President, they are both sovereign. The State is sovereign over its lands, and the National Government is sovereign over its lands.

Mr. HEYBURN. Then, why should one sovereign, because it is larger than the other, absorb the small one?

Mr. NEWLANDS. It ought not to.

Mr. HEYBURN. But it does.

Mr. NEWLANDS. There ought to be treaties between the two——

Mr. HEYBURN. That is an old doctrine.

Mr. NEWLANDS. And negotiations in the spirit of accommodation and helpfulness; and I have no doubt that will be the case. But that is no argument against the general system of the forest reserves, and I think the Senator from Idaho will find that he stands almost alone in the Senate in his opposition to the general policy. I am not talking about a particular case, but his opposition to the general policy of forest reserves.

Mr. HEYBURN. Mr. President, I have frequently been quoted as being in opposition to the general policy of forest reserves. I am not in opposition to the policy of forest reserves.

Mr. NEWLANDS. I am glad to know that.

Mr. HEYBURN. But I am in opposition to the policy of forest reserves that transgress the rights of American citizens, individually or collectively.

Mr. NEWLANDS. I stand with the Senator there. I am satisfied that, with patience, we will work this whole thing out. The people of the West have naturally resented any national interference or control, but that control is being very wisely exercised, and I have no doubt in the end will meet with the satisfaction of all.

During the delivery of Mr. NEWLAND'S speech,

Mr. CLAPP. I think, for the benefit of Senators, I should state that the Indian appropriation bill will not be brought up this afternoon, but it will be moved the first thing at the close of the routine business in the morning.

After the conclusion of Mr. NEWLAND'S speech,

## EMPLOYMENT OF CHILD LABOR.

Mr. BACON. Mr. President, by the courtesy of the Senator from Minnesota [Mr. CLAPP] I trespass upon the time of the Senate for a few moments. I would not do so at this late hour, but the business of the Senate is becoming so congested that we have to take advantage of every opportunity presented.

While the senior Senator from Indiana [Mr. BEVERIDGE] was discussing a week ago to-day on this floor the so-called "child-labor bill," he had occasion to very severely condemn the Georgia law for the suppression of child labor, speaking of it as not being worth the paper upon which it was written. I endeavored at that time to have the law inserted, in order that others who might read his denunciation of it might have the opportunity to see whether or not it was a well-merited condemnation or whether the law was, in fact, in its terms calculated to be effective. The Senator, however, would not consent that I should do so at that time. I then stated that I would take opportunity, after he had finished his speech, to insert that law in the RECORD. I have delayed doing so until this time, thinking that the discussion of the subject would be resumed, but it was concluded by him on the next day, which was the 29th of January, and has not since been before the Senate. I do not feel justified, however, in longer withholding the redemption of my promise in that regard. I therefore now present the law of Georgia for insertion in the RECORD. I will not take the time to read it, unless so required by some Senator.

The VICE-PRESIDENT. Without objection, permission is granted to have the law referred to by the Senator printed in the RECORD without reading.

The law referred to is as follows:

No. 399.

An act to regulate the employment of children in factories and manufacturing establishments in this State, and to provide for the punishment of violations of the regulations prescribed, and for other purposes.

SECTION 1. Be it enacted by the general assembly of Georgia, and it is hereby enacted by authority of the same, that from and after the approval of this act no child under 10 years of age shall be employed or allowed to labor in or about any factory or manufacturing establishment within this State under any circumstances.

SEC. 2. Be it further enacted by the authority aforesaid, that on and after January 1, 1907, no child under 12 years of age shall be so employed or allowed to labor, unless such child be an orphan and has no other means of support or unless a widowed mother or an aged or disabled father is dependent upon the labor of such child, in which event, before putting such child at such labor, such father shall produce and file in the office of such factory or manufacturing establishment a certificate from the ordinary of the county in which such factory or establishment is located, certifying under his seal of office to the facts required to be shown as herein prescribed: *Provided*, That no ordinary shall issue any such certificate except upon strict proof in writing and under oath clearly showing the necessary facts: *And provided further*, That no such certificate shall be granted for longer than one year nor accepted by any employer after one year from the date of such certificate.

SEC. 3. Be it further enacted by the authority aforesaid, that on and after January 1, 1908, no child under 14 years of age shall be employed or allowed to labor in or about any factory or manufacturing establishment within this State between the hours of 7 p. m. and 6 a. m.

SEC. 4. Be it further enacted by the authority aforesaid, that on and after January 1, 1908, no child, except as heretofore provided, under 14 years of age shall be employed or allowed to labor in or about any factory or manufacturing establishment within this State, unless he or she can write his or her name and simple sentences, and shall have attended school for twelve weeks of the preceding year, six weeks of which school attendance shall be consecutive; and no such child as aforesaid between the ages of 14 and 18 years shall be so employed unless such child shall have attended school for twelve weeks of the preceding year, six weeks of which school attendance shall be consecutive; and at the end of each year, until such child shall have passed the public age, an affidavit certifying to such attendance as is required by this section shall be furnished to the employer by the parent or guardian or person sustaining parental relations to such child. The provisions of this section shall apply only to children entering such employment at the age of 14 years or less.

SEC. 5. Be it further enacted by the authority aforesaid, that it shall be unlawful for any owner, superintendent, agent, or any other person acting for or in behalf of any factory or manufacturing establishment to hire or employ any child unless there is first provided and placed on file in the office of such employer an affidavit signed by the parent, guardian, or person standing in parental relation thereto, certifying to the age and date of birth of such child, and other facts required in this act. Any person knowingly furnishing a false affidavit as to the age or as to any other facts required in this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished as prescribed in section 1039 of the Penal Code of Georgia, 1895.

SEC. 6. *Be it further enacted by the authority aforesaid*, That the affidavit and certificates required in this act shall be open to inspection by the grand juries of any county where such factory or manufacturing establishments are located.

SEC. 7. *Be it further enacted by the authority aforesaid*, That any person or agent, or representative of any firm or corporation, who shall violate any provision of this act shall be deemed guilty of a misdemeanor and on conviction shall be punished as prescribed in section 1039 of the Penal Code of Georgia, 1895. Any parent, guardian, or other person standing in parental relation to a child who shall hire or place for employment or labor in or about any factory or manufacturing establishment within this State a child in violation of any provision of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as prescribed in section 1039 of the Penal Code of Georgia, 1895.

SEC. 8. *Be it further enacted by the authority aforesaid*, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

Approved August 1, 1906.

Mr. BACON. I desire to say a very few more words upon the subject. Aside from the terms of a law in the consideration whether or not a law is effective, of course the evidences as to its operation are material. The Senator from Indiana, recognizing that fact, made a statement as to the operation of the Georgia law. On the 29th of January, when he was again addressing the Senate, I endeavored to properly present to the Senate the correction which I deemed necessary of the statement made by him, but the Senator did not give me the opportunity at the time to fully present it. Therefore I am under the necessity of now presenting it in order that it may be clearly set forth.

In the course of the discussion on the 28th of January the Senator, in response to an inquiry by me as to the statement made by him as to the efficiency of the law, made certain representations as to the efficiency of that law in its practical operation, as disclosed in the following colloquy between the Senator and myself, which I read from the stenographer's notes, the Senator's speech having not yet appeared in the RECORD. This occurred on January 28:

Mr. BACON. The Senator, in reply to the suggestion as to the efficacy of the Georgia law, made a statement as to the number of children under age in the South who are now employed in the mills. I should like to ask the Senator, as he seems to have exhaustively studied the question, if he is prepared to state how many children in Georgia under 12 years of age or under 14 years of age are to-day employed in the mills?

Mr. BEVERIDGE. I will answer the Senator even more directly than that. I will state that under the new law, which went into effect this very year, there had been applications for the employment of children up to last week in the county clerk's office—I believe it is in Atlanta, or whichever is the greatest city in your State—for 3,000 children, just as there were in Maryland applications since the new law went into effect there for 11,000 children, 1,200 of which were affected, although the census shows there were only 5,000 children of that age at work after the law went into effect on the first of the year, and I shall present it. There have been applications for more than 3,000.

Mr. BACON. How many of the applications have been granted?

Mr. BEVERIDGE. All were granted.

Mr. BACON. Has the Senator any evidence that they were all granted?

Mr. BEVERIDGE. Yes, sir.

Subsequent to that, on the same day, the Senator read this from the Atlanta Journal of January 5, 1907:

Despite the fact that the child-labor bill—

Speaking now of the Georgia child-labor bill—

became effective in Georgia January 1, it is nevertheless estimated by Ordinary Wilkinson that in Fulton County alone during the current year between 2,000 and 3,000 children under 12 years of age may be put to work in the factories.

On the next morning, which was the 29th of January, before the Senator resumed his argument, I asked him whether he had any other evidence in support of the statement made by him that there had been 3,000 applications filed in that county and that all of them were granted, except the evidence found in the quotation from the Atlanta Journal which I have just read. He replied to me that he had no other evidence. I then sent a telegram to the ordinary of Fulton County, the county in which Atlanta is situated, the ordinary being the official title in that State of the judge of probate, who has charge of such matters. The telegram I sent to him was in these words:

It was asserted yesterday in the Senate that 3,000 applications had been made in Fulton County for exception certificates under the child-labor law and all had been granted. Please telegraph me if the statement is correct, and if not, give number of certificates that have been granted.

A. O. BACON.

Judge Wilkinson sent the following reply:

ATLANTA, GA., *January 29, 1907.*

Hon. A. O. BACON,
*United States Senate, Washington, D. C.:*

Assertion in Senate as to application for exception certificates under child-labor law incorrect, as only ten applications have been granted in Fulton County, and the officers of the mills and factories affected by the law are desirous of having it enforced.

JOHN R. WILKINSON, *Ordinary, Fulton County.*

I also received on the same morning the following telegram from Hon. Madison Bell, who was one of the authors, if he may not be said to be the author, of the Georgia child-labor law, he being a member of the Georgia legislature:

ATLANTA, GA., *January 29, 1907.*

Senator A. O. BACON,
*Washington, D. C.:*

BEVERIDGE entirely ignorant of provisions and effect of the child-labor law. Grand juries in each county have special authority to inspect and must see that law is enforced. Ten permits only by Ordinary Wilkinson, of this county. Can prove that thousands of children have been freed from the mills in this State since January 1, 1907.

MADISON BELL.

I also received, Mr. President, a telegram to the same effect, which I will not stop now to read, from Mr. Samuel A. Carter, president Gate City Cotton Mills, and a letter from him of the same date on the same subject, which I ask to have printed in the RECORD without taking the time to read, and also a letter from him addressed to the ordinary of Fulton County and the reply of the ordinary of Fulton County to the same effect as the telegram he sent me.

The VICE-PRESIDENT. In the absence of objection, permission is granted to print the telegram and letters referred to in the RECORD.

The telegram and letters referred to are as follows:

ATLANTA, GA., *January 29, 1907.*

Senator A. O. BACON, *Washington, D. C.:*

Judge Wilkinson says Senator BEVERIDGE'S statement is incorrect; only ten applications been made since January, three of these from cotton mills; letter explains.

SAMUEL A. CARTER,
*President Gate City Cotton Mills.*

---

GATE CITY COTTON MILLS,
*Atlanta, Ga., January 29, 1907.*

Hon. A. O. BACON,
*Senate Chamber, Washington, D. C.*

DEAR SIR: I beg to confirm my telegram to you this p. m., regarding the statement of Judge Wilkinson as to the application being made to him for children to work in the mills of Fulton County. I also beg to call your attention to the inclosed correspondence, which explains itself.

And I assert most positively from information received by me from the cotton-mill presidents of Fulton and adjacent counties that the law regarding child labor is being rigidly enforced. There has not been a single application from our mill made to the ordinary.

I have talked with a great number of cotton-mill officials during the past few months, and the information received from them in various sections of the State was that the children that had been working in their mills under 12 years of age had been discarded; and the 1st of January, when the law took effect, there was no hardship upon the mills. The majority of manufacturing plants in Georgia and the South are of modern construction, with all of the comforts and conveniences to be had, and their cottages are new and comfortable, and the operatives, as a mass, are much better off as to churches, schools, and societies, and protection otherwise, than when they lived in the rural and mountainous sections of our State. * * *

With highest regards, I beg to remain,

Very truly, yours,

SAMUEL A. CARTER, *President.*

---

GATE CITY COTTON MILLS,
*Atlanta, Ga., January 29, 1907.*

Judge JNO. R. WILKINSON,
*Ordinary's Office, Atlanta, Ga.*

DEAR SIR: I notice from the Atlanta Constitution this morning a special from Washington, D. C., stating that Senator BEVERIDGE made an assertion in the Senate on yesterday "that since the 1st of January more than 3,000 applications for permission to work children in the mills of Fulton County had been received by you. Will you please let me know officially if this assertion of Senator BEVERIDGE is correct. Also let me know of the applications that have been made how many are from the cotton mills of Fulton County.

Thanking you in advance for a prompt reply, I beg to remain,

Very truly, yours,

GATE CITY COTTON MILLS.
By SAML. A. CARTER.

---

ATLANTA, GA., *January 29, 1907.*

SAMUEL A. CARTER, *President.*

DEAR SIR: In reply to your inquiry in regard to applications for certificates under child-labor law, I beg to say that I have had only ten applications, and of that number only three were for work in the cotton mills, the remainder being for work in the woolen mills, furniture factories, etc.

This covers all times since January 1, 1907, and is up to date and is probably all we will have, as it has been several days since we have had an inquiry.

Yours, truly, JOHN R. WILKINSON,
*Ordinary.*

Mr. BACON. Mr. President, I only bring this up for the purpose of calling attention to the fact that the only foundation for the statement that there were 3,000 applications and that all of the 3,000 applications had been granted was the extract from the Atlanta Journal which I have read, and that the only correction which the Senator from Indiana has made—though he claimed that he had made the correction—is the reading of the particular extract which I have now read.

There was an additional part of the article from the Atlanta Journal which he did read, which will be found, I presume, in his speech when it is published, which in no manner relates to the number of applications which had been made or the number of them which had been granted.

Mr. President, I do not desire to pursue this subject, especially in the absence of the Senator from Indiana, further than to say that I am as much in favor of the suppression of child labor as is the Senator from Indiana. I do not, however, think that it is necessary, in order to suppress it, that conditions in the States should be magnified or that the efforts which are being made and have been made to suppress it should be minified. Nor do I think it is necessary, in order that there should be a suppression of child labor, that there should be any Federal statute on the subject. I believe that the States are fully capable of dealing with this subject and that the States can better deal with it, because the conditions are different in different States and in different latitudes and longitudes.

But so far as the State of Georgia is concerned, I am satisfied that it is the intention of the people of that State to suppress child labor. They have taken what they believe to be an efficient step in that direction in the passage of this law. Whenever it shall be demonstrated that it is not effective, there will be amendments made to it by the State of Georgia which will make it effective. The State is in no manner dependent upon Federal legislation in order to correct what its people believe to be a great evil and which they are determined to suppress.

S. KATE FISHER AND RATHBUN, BEACHY & CO.

Mr. KEAN. I move that the Senate proceed to the consideration of executive business.

Mr. KITTREDGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from New Jersey yield to the Senator from South Dakota?

Mr. KEAN. I withdraw the motion.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (H. R. 8080) for the relief of S. Kate Fisher.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to pay to S. Kate Fisher, of St. Paul, Minn., $400, erroneously paid by her for entry of public lands in the local land office for the district of Duluth, Minn.

Mr. KITTREDGE. I move to insert at the end of the bill, to be known as section 2, the amendment I send to the desk.

The VICE-PRESIDENT. The Senator from South Dakota proposes an amendment, which will be stated.

The SECRETARY. It is proposed to insert as a new section the following:

SEC. 2. That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to Rathbun, Beachy & Co., of Webster, S. Dak., the sum of $1,000, in full compensation for loss in sale of cattle illegally placed in quarantine by Government inspector at the stock yards in Chicago, Ill.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

EXECUTIVE SESSION.

Mr. KEAN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened, and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, February 5, 1907, at 12 o'clock meridian.

## NOMINATIONS.

*Executive nominations received by the Senate February 4, 1907.*

SURVEYORS OF CUSTOMS.

James H. Bolton, of Iowa, to be surveyor of customs for the port of Sioux City, in the State of Iowa. (Reappointment.)

Winfield S. Boynton, of Colorado, to be surveyor of customs for the port of Denver, in the State of Colorado, in place of Nelson F. Handy, whose term of service will expire by limitation March 2, 1907.

ASSISTANT APPRAISER OF MERCHANDISE.

Richard J. Bruce, of Maryland, to be assistant appraiser of merchandise in the district of Baltimore, in the State of Maryland, in place of James Campbell, transferred.

COLLECTOR OF INTERNAL REVENUE.

Charles G. Burton, of Missouri, to be collector of internal revenue for the sixth district of Missouri, in place of Charles W. Roberts, resigned.

MEMBER CALIFORNIA DÉBRIS COMMISSION.

Capt. Thomas H. Jackson, Corps of Engineers, United States Army, for appointment as a member of the California Débris Commission, provided for by the act of Congress approved March 1, 1893, entitled "An act to create the California Débris Commission and regulate hydraulic mining in the State of California," vice Col. William H. Heuer, Corps of Engineers, United States Army, to be relieved.

PROMOTIONS IN THE ARMY.

*Infantry Arm.*

Maj. George R. Cecil, Thirtieth Infantry, to be lieutenant-colonel from January 31, 1907, vice Crittenden, Tenth Infantry, retired from active service.

Capt. Joseph P. O'Neil, Twenty-fifth Infantry, to be major from January 31, 1907, vice Cecil, Thirtieth Infantry, promoted.

PROMOTIONS IN THE NAVY.

Passed Asst. Surg. Henry E. Odell to be a surgeon in the Navy from the 6th day of September, 1906, vice Surg. George P. Lumsden, promoted.

Asst. Surg. Robert H. Michels to be a passed assistant surgeon in the Navy from the 8th day of October, 1906, upon the completion of three years' service in his present grade.

REGISTERS OF LAND OFFICES.

Edward E. Armour, of Sterling, Colo., to be register of the land office at Sterling, Colo., vice David C. Fleming, term expired.

John E. Evans, of North Platte, Nebr., to be register of the land office at North Platte, Nebr., vice George E. French, term expired.

Lawrence N. Houston, of Enid, Okla., who was appointed October 15, 1906, during the recess of the Senate, to be register of the land office at Guthrie, Okla., vice John J. Boles, term expired (Cassius M. Cade having declined).

RECEIVER OF PUBLIC MONEYS.

William H. C. Woodhurst, of North Platte, Nebr., to be receiver of public moneys at North Platte, Nebr., vice Elbridge D. Owens, term expired.

POSTMASTERS.

CALIFORNIA.

Orlando J. Lincoln to be postmaster at Santa Cruz, in the county of Santa Cruz and State of California, in place of Orlando J. Lincoln. Incumbent's commission expires February 9, 1907.

CONNECTICUT.

Frank J. Letters to be postmaster at Putnam, in the county of Windham and State of Connecticut, in place of Frank J. Letters. Incumbent's commission expires February 4, 1907.

ILLINOIS.

F. M. Herzog to be postmaster at Blandinsville, in the county of McDonough and State of Illinois, in place of Frank Murphy. Incumbent's commission expired March 1, 1905.

INDIANA.

Samuel A. Connelly to be postmaster at Upland, in the county of Grant and State of Indiana, in place of Asa M. Ballinger. Incumbent's commission expired February 3, 1907.

Morris A. Jones to be postmaster at Brook, in the county of Newton and State of Indiana. Office became Presidential January 1, 1907.

J. F. Martin to be postmaster at Bourbon, in the county of Marshall and State of Indiana, in place of Samuel Iden. Incumbent's commission expired December 20, 1906.

Calvin Myers to be postmaster at Francesville, in the county of Pulaski and State of Indiana, in place of Caleb W. Barker, resigned.

IOWA.

George Hardenbrook to be postmaster at Maxwell, in the county of Story and State of Iowa, in place of George Hardenbrook. Incumbent's commission expires February 9, 1907.

John H. Luse to be postmaster at Mystic, in the county of Appanoose and State of Iowa, in place of Joseph D. Ball. Incumbent's commission expired January 22, 1907.

Henry D. Muehe to be postmaster at Dyersville, in the county of Dubuque and State of Iowa, in place of Evan Gibbons. Incumbent's commission expired December 16, 1905.

Hervey J. Vail to be postmaster at New Sharon, in the county of Mahaska and State of Iowa, in place of Hervey J. Vail. Incumbent's commission expires February 11, 1907.

KANSAS.

Fred W. Willard to be postmaster at Leavenworth, in the county of Leavenworth and State of Kansas, in place of Fred W. Willard. Incumbent's commission expired June 30, 1906.

KENTUCKY.

William M. Anderson to be postmaster at Nicholasville, in the county of Jessamine and State of Kentucky, in place of William L. Buford. Incumbent's commission expired April 2, 1906.

Virgil L. Bacon to be postmaster at Madisonville, in the county of Hopkins and State of Kentucky, in place of Virgil L. Bacon. Incumbent's commission expired March 13, 1906.

Albert Browning to be postmaster at Providence, in the county of Webster and State of Kentucky. Office became Presidential January 1, 1906.

Joseph W. Demombrom to be postmaster at Horse Cave, in the county of Hart and State of Kentucky, in place of Cam B. McPherson, deceased.

James H. Ford to be postmaster at Benton, in the county of Marshall and State of Kentucky. Office became Presidential April 1, 1906.

Edwin B. Linney to be postmaster at Danville, in the county of Boyle and State of Kentucky, in place of Edwin B. Linney. Incumbent's commission expired January 13, 1906.

James P. Spilman to be postmaster at Harrodsburg, in the county of Mercer and State of Kentucky, in place of James A. Tomlinson. Incumbent's commission expired May 19, 1906.

Jesse D. Tuggle to be postmaster at Barbourville (late Barboursville), in the county of Knox and State of Kentucky, in place of Daniel McDonald. Incumbent's commission expired January 13, 1906.

Thomas L. Walker to be postmaster at Lexington, in the county of Fayette and State of Kentucky, in place of Charles H. Berryman, resigned.

LOUISIANA.

George W. Whitworth to be postmaster at Jeanerette, in the parish of Iberia and State of Louisiana, in place of George W. Whitworth. Incumbent's commission expires March 3, 1907.

MAINE.

Charles H. Hooper to be postmaster at Castine, in the county of Hancock and State of Maine, in place of Charles H. Hooper. Incumbent's commission expired January 6, 1907.

Charles H. White to be postmaster at Orono, in the county of Penobscot and State of Maine, in place of Charles C. White, resigned.

MASSACHUSETTS.

Kate E. Hazen to be postmaster at Shirley, in the county of Middlesex and State of Massachusetts, in place of Kate E. Hazen. Incumbent's commission expired January 26, 1907.

MICHIGAN.

Thomas E. Mitchell to be postmaster at Trimountain, in the county of Houghton and State of Michigan. Office became Presidential January 1, 1907.

MINNESOTA.

Isaac I. Bargen to be postmaster at Mountain Lake, in the county of Cottonwood and State of Minnesota, in place of Isaac I. Bargen. Incumbent's commission expired January 23, 1907.

James C. Poole to be postmaster at Eveleth, in the county of St. Louis and State of Minnesota, in place of James C. Poole. Incumbent's commission expired December 10, 1906.

MISSOURI.

Jerome W. Jones to be postmaster at Brookfield, in the county of Linn and State of Missouri, in place of Jerome W. Jones. Incumbent's commission expires February 9, 1907.

NEBRASKA.

Donald McLeod to be postmaster at Schuyler, in the county of Colfax and State of Nebraska, in place of Donald McLeod. Incumbent's commission expired December 20, 1906.

NEVADA.

Charles F. Littrell to be postmaster at Austin, in the county of Lander and State of Nevada, in place of Charles F. Littrell. Incumbent's commission expires March 18, 1907.

NEW YORK.

Jonas M. Preston to be postmaster at Delhi, in the county of Delaware and State of New York, in place of Jonas M. Preston. Incumbent's commission expired January 22, 1907.

John O. Thibault to be postmaster at Clayton, in the county of Jefferson and State of New York, in place of John O. Thibault. Incumbent's commission expired January 7, 1907.

James A. Wilson to be postmaster at Sacket Harbor, in the county of Jefferson and State of New York, in place of James A. Wilson. Incumbent's commission expired February 19, 1906.

NORTH DAKOTA.

Otto E. Holmes to be postmaser at Kensal, in the county of Stutsman and State of North Dakota. Office became Presidential January 1, 1907.

Percy F. Meharry to be postmaster at Starkweather, in the county of Ramsey and State of North Dakota. Office became Presidential October 1, 1906.

OHIO.

Edward J. Lewis to be postmaster at Girard, in the county of Trumbull and State of Ohio, in place of Edward J. Lewis. Incumbent's commission expires March 3, 1907.

John A. Lowrie to be postmaster at Seville, in the county of Medina and State of Ohio, in place of John A. Lowrie. Incumbent's commission expired January 19, 1907.

John C. Rock to be postmaster at West Liberty, in the county of Logan and State of Ohio, in place of James K. McDonald. Incumbent's commission expired December 20, 1906.

OKLAHOMA.

Marshall A. Younkman to be postmaster at McLoud, in the county of Pottawatomie and Territory of Oklahoma, in place of Marshall A. Younkman. Incumbent's commission expired December 20, 1906.

OREGON.

John M. Parry to be postmaster at Moro, in the county of Sherman and State of Oregon, in place of John M. Parry. Incumbent's commission expired January 20, 1907.

Andreas L. Sproul to be postmaster at Ontario, in the county of Malheur and State of Oregon, in place of Andreas L. Sproul. Incumbent's commission expires March 10, 1907.

PENNSYLVANIA.

Henry M. Brownback to be postmaster at Norristown, in the county of Montgomery and State of Pennsylvania, in place of Henry M. Brownback. Incumbent's commission expires February 5, 1907.

David P. Hughes to be postmaster at East Mauch Chunk, in the county of Carbon and State of Pennsylvania, in place of David P. Hughes. Incumbent's commission expires February 26, 1907.

John S. Wilson to be postmaster at Columbia, in the county of Lancaster and State of Pennsylvania, in place of John S. Wilson. Incumbent's commission expired January 26, 1907.

TEXAS.

J. Allen Myers to be postmaster at Bryan, in the county of Brazos and State of Texas, in place of J. Allen Myers. Incumbent's commission expires February 26, 1907.

VIRGINIA.

S. B. Carney to be postmaster at Norfolk, in the county of Norfolk and State of Virginia, in place of Henry B. Nichols. Incumbent's commission expires February 28, 1907.

WASHINGTON.

Nelson J. Bostwick to be postmaster at Hillyard, in the county of Spokane and State of Washington, in place of Flora E. Cornforth, resigned.

WISCONSIN.

Henry E. Blair to be postmaster at Waukesha, in the county of Waukesha and State of Wisconsin, in place of Arthur W. James. Incumbent's commission expires February 26, 1907.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate February 4, 1907.*

POSTMASTERS.

ILLINOIS.

Albert W. Errett to be postmaster at Kewanee, in the county of Henry and State of Illinois.

Riley M. Garman to be postmaster at Forreston, in the county of Ogle and State of Illinois.

Oliver P. Stoddard to be postmaster at Galva, in the county of Henry and State of Illinois.

IOWA.

Russell G. Clark to be postmaster at Webster City, in the county of Hamilton and State of Iowa.

KANSAS.

Austin Brown to be postmaster at Cedar Vale, in the county of Chautauqua and State of Kansas.

MINNESOTA.

Murray J. Taylor to be postmaster at Deer River, in the county of Itasca and State of Minnesota.

NEW YORK.

Willoughby W. Babcock to be postmaster at Prattsburg, in the county of Steuben and State of New York.

Alfred S. Emmons to be postmaster at Spencer, in the county of Tioga and State of New York.

Genevieve French to be postmaster at Sag Harbor, in the county of Suffolk and State of New York.

Jetur R. Rogers to be postmaster at Southampton, in the county of Suffolk and State of New York.

Oscar B. Stratton to be postmaster at Addison, in the county of Steuben and State of New York.

NORTH DAKOTA.

Charles E. Best to be postmaster at Enderlin, in the county of Ransom and State of North Dakota.

OHIO.

Wesley J. Grant to be postmaster at Middlefield, in the county of Geauga and State of Ohio.

OREGON.

Henry A. Snyder to be postmaster at Aurora, in the county of Marion and State of Oregon.

PENNSYLVANIA.

William P. Bach to be postmaster at Pottstown, in the county of Montgomery and State of Pennsylvania.

Frank E. Baldwin to be postmaster at Austin, in the county of Potter and State of Pennsylvania.

Howard E. Butz to be postmaster at Huntingdon, in the county of Huntingdon and State of Pennsylvania.

William F. McDowell to be postmaster at Mercersburg, in the county of Franklin and State of Pennsylvania.

Ross W. Nissley to be postmaster at Hummelstown, in the county of Dauphin and State of Pennsylvania.

David M. Turner to be postmaster at Towanda, in the county of Bradford and State of Pennsylvania.

TEXAS.

Robert F. Lindsay to be postmaster at Mount Pleasant, in the county of Titus and State of Texas.

UTAH.

Thomas Braby to be postmaster at Mount Pleasant, in the county of Sanpete and State of Utah.

Charles H. Roberts to be postmaster at Bingham Canyon, in the county of Salt Lake and State of Utah.

WASHINGTON.

C. F. Legg to be postmaster at Chewelah, in the county of Stevens and State of Washington.

Frank R. Wright to be postmaster at South Bend, in the county of Pacific and State of Washington.

WISCONSIN.

Fred M. Griswold to be postmaster at Lakemills, in the county of Jefferson and State of Wisconsin.

James McGinty to be postmaster at Darlington, in the county of Lafayette and State of Wisconsin.

William White to be postmaster at Algoma, in the county of Kewaunee and State of Wisconsin.

## HOUSE OF REPRESENTATIVES.

MONDAY, *February 4, 1907.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of Saturday was read and approved.

EXTENSION OF ALBEMARLE STREET, DISTRICT OF COLUMBIA.

The SPEAKER laid before the House the following resolution of the Senate.

The Clerk read the resolution, as follows:

*Resolved*, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 7795) for the extension of Albemarle street NW., District of Columbia.

The SPEAKER. Without objection, the Committee on the District of Columbia will be discharged from the further consideration of the bill referred to, and the same be returned to the Senate.

There was no objection.

BRIDGE ACROSS THE MISSOURI RIVER.

The SPEAKER also laid before the House the following request of the Senate.

The Clerk read as follows:

*Resolved*, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 7917) to authorize the Interstate Bridge and Terminal Railway Company, of Kansas City, Kans., to construct a bridge across the Missouri River.

The SPEAKER. Without objection, the bill will be returned to the Senate.

There was no objection.

PENSIONS FOR ENLISTED MEN, SOLDIERS, AND OFFICERS IN CIVIL WAR AND WAR WITH MEXICO.

Mr. SULLOWAY. Mr. Speaker, I move to suspend the rules and pass the bill (S. 976) granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and in the war with Mexico.

The Clerk read the bill, as follows:

*Be it enacted, etc.*, That any person who served ninety days or more in the military or naval service of the United States during the late civil war or sixty days in the war with Mexico, and who has been honorably discharged therefrom, and who has reached the age of 62 years or over, shall, upon making proof of such facts according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the pension roll and be entitled to receive a pension as follows: In case such person has reached the age of 62 years, $12 per month; 70 years, $15 per month; 75 years or over, $20 per month; and such pension shall commence from the date of the filing of the application in the Bureau of Pensions after the passage and approval of this act: *Provided*, That pensioners who are 62 years of age or over, and who are now receiving pensions under existing laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions in such form as he may prescribe, receive the benefits of this act; and nothing herein contained shall prevent any pensioner or person entitled to a pension from prosecuting his claim and receiving a pension under any other general or special act: *Provided*, That no person shall receive a pension under any other law at the same time or for the same period that he is receiving a pension under the provisions of this act: *Provided further*, That no person who is now receiving or shall hereafter receive a greater pension under any other general or special law than he would be entitled to receive under the provisions herein shall be pensionable under this act.

SEC. 2. That rank in the service shall not be considered in applications filed hereunder.

SEC. 3. That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in presenting any claim to the Bureau of Pensions, or securing any pension, under this act.

Mr. SHERLEY. Mr. Speaker, as I understand, the bill gives a pension simply to the veterans of the Mexican and the civil war?

Mr. SULLOWAY. Yes.

Mr. SHERLEY. Would there be any objection to an amendment embracing the soldiers of the Spanish-American war?

Mr. SULLOWAY. I will say to the gentleman that the two committees sitting as one committee voted unanimously in favor of this bill and directed us to oppose any amendment.

The SPEAKER. Debate is out of order. Is a second demanded?

Mr. FITZGERALD. I demand a second.

Mr. SULLOWAY. I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection that a second be considered as ordered?

There was no objection.

Mr. SHERLEY. Mr. Speaker, if the gentleman will permit, I wish to say that there are a few veterans of the Spanish-American war who by age would be entitled to the provisions of this bill, and I can see no reason in fact why the bill should not include them. While, of course, the gentleman can prevent an amendment to the bill, I suggest that it would be a proper amendment to include the veterans of the Spanish-American war who have reached the required age.

Mr. LOUDENSLAGER. Mr. Speaker, in reply to the gentleman from Kentucky I will say that there are two reasons why the amendment could not be permitted to this bill. The gentleman from New Hampshire and myself were instructed by both committees unanimously, after agreeing to a report on this bill, to oppose any amendment that would be likely to be offered. A still better reason why we ought not to agree to the proposed amendment is that this is a service pension bill, and never in the history of this country has a service pension bill been passed for survivors of any war within thirty-five years of the close of the war. So that the soldiers of the Spanish-American war, gallant though they be, do not deserve any more credit than the gallant heroes of all the other wars of this nation.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to ask the gentleman from New Hampshire a question.

Mr. SULLOWAY. Very well.

Mr. STEPHENS of Texas. Would the gentleman have any objection to an amendment that would include the soldiers who served in the United States Army on the frontier before the civil war and are now drawing pensions?

Mr. SULLOWAY. We have been directed by the two committees, sitting jointly, to oppose any amendment.

Mr. STEPHENS of Texas. These men are about 70 years of age and performed this service at a time when it was very dangerous. They only draw small pensions, and it was more than fifty years ago that they performed this service. Many of them are drawing no pensions at all; they are scattered all over the western part of this country.

Mr. LOUDENSLAGER. The merit of any amendment does not enter into this question. There may be thirty or forty meritorious amendments suggested. The fact remains that if one amendment is permitted, some of more merit ought to be attached to the bill, which will finally defeat the very object sought for by the bill. Hence it was the unanimous judgment of both committees that no amendment should be permitted to this bill. That ought to be a sufficient answer to any and every